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Supreme Court, U.S.
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Supreme Court of the United States

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED,
Petitioner,

v.

FINANCIAL SOFTWARE SYSTEMS, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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161 pp

QUESTIONS PRESENTED

Petitioner Financial Systems Software (UK) Limited ("Systems") sued Respondent Financial Software Systems, Inc. ("Software") in federal district court, alleging infringement of its FSS trademark. Software defended on the basis that Systems had abandoned its trademark under Section 45 of the Lanham Act, 15 U.S.C. § 1127. The United States District Court for the Eastern District of Pennsylvania summarily adjudicated the abandonment issue in Software's favor and the United States Court of Appeals for the Third Circuit affirmed.

The questions presented are:

Generally, does Due Process of Law require that the hearing afforded a litigant exhibit minimal standards of adherence to the substantive law, and the standards of proof governing dispositive issues, and the procedural safeguards designed to guarantee a litigant its day in court?

Specifically, has the owner of a trademark that has been summarily adjudicated to have abandoned its mark suffered a forfeiture in violation of the owner's right to due process of law where the lower courts have declined either to address or to apply to the issue of abandonment: (a) the substantive standards that have been established *ex ante*; (b) the heightened standard of proof required because abandonment effects a forfeiture; and (c) the requirement that the applicable standard of proof be taken into account in determining whether a matter is properly amenable to summary disposition?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Financial Systems Software (UK) Ltd. is the only Petitioner in this proceeding. Petitioner certifies pursuant to Supreme Court Rule 29.6 that it has no parent corporation nor are there any publicly held companies owning 10% or more of its stock. Financial Software Systems, Inc. is the only Respondent in this proceeding. To Petitioner's knowledge, Respondent has no parent corporation and there are no publicly held companies owning 10% or more of Respondent's stock.

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PETITION FOR WRIT OF CERTIORARI

Financial Systems Software (UK) Limited ("Systems") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit ("Court of Appeals") in this case.

OPINIONS BELOW

On December 7, 1999, the United States District Court for the Eastern District of Pennsylvania (Shapiro, J.) ("District Court") rendered its decision granting Software's motion for summary judgment and dismissing Systems' trademark infringement claim. *App.* at 34a-47a.[1] In an opinion rendered on October 17, 2000, and amended on April 13, 2001, the Court of Appeals affirmed the judgment of the District Court. *App.* at 23a-33a and 1a-12a, respectively.

JURISDICTION

The judgment of the Court of Appeals was entered on October 17, 2000. *App.* at 23a-33a. A timely Petition for Rehearing was filed on February 15, 2001, and was denied on March 27, 2001. *App.* at 15a-16a. Following its denial of the Petition for Rehearing, the Court of Appeals issued an amended opinion on April 13, 2001, but did not amend its judgment. *App.* at 1a-12a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (2001).

CONSTITUTIONAL PROVISION AND FEDERAL STATUTE INVOLVED

The Fifth Amendment to the U.S. Constitution provides in relevant part: "No person shall be * * * deprived of life liberty or property, without due process of law * * *."

Section 43(a), 15 U.S.C. § 1125(a) (2001), provides in relevant part:

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1. "*App.*" refers to the Appendix for the Petition for a Writ of Certiorari.

(a)(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which —

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is likely to be damaged by such act.

(2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.

* * *

Section 45 of the Lanham Act, 15 U.S.C. § 1127 (2001), provides in relevant part:

A mark shall be deemed to be "abandoned" when either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of that mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

* * *

STATEMENT OF THE CASE

This case raises, in the context of the affirmative defense of abandonment under Section 45 of the Lanham Act, 15 U.S.C. § 1127 (2001), important questions as to the degree of process that is due before a litigant may suffer forfeiture of valuable property rights. Specifically, it raises the question of whether courts may, consistently with due process, disregard the substantive law applicable to a dispositive issue, the standard of proof required as to that issue and this Court's injunction that the standard of proof must be considered as part of the courts' analysis of whether a party may be deprived of its day in court via summary judgment.

As this Court has stated, "a fair trial in a fair tribunal is a basic requirement of due process." *Weiss v. United States*, 510 U.S. 163, 178 (1994) (citation omitted). Systems submits that the proceedings in this case did not merely result in error, but were fundamentally unfair. The essence of Systems' position is that it did not receive a hearing consonant with due process because the courts below did not in fact address or seek to apply established legal standards that should have governed the issues before them. In *Armstrong v. Manzo et ux.*, 380 U.S. 545 (1965), the Petitioner had not received notice of pending adoption proceedings with respect to his natural child, but was subsequently afforded a hearing on the question of whether the adoption decree that had been entered without his knowledge should be annulled. This Court held that the subsequent hearing failed to afford Petitioner due process of law, because, at that hearing, the Petitioner was required to shoulder burdens of proof that would have been his opponent's had he received notice of and opposed the original adoption petition. Systems has suffered exactly the same type of injury as did the Petitioner in *Armstong*, because, among other things, the District Court improperly shifted the burden of proof to Systems to disprove abandonment despite the fact that no *prima facie* case of abandonment had been made out.

The facts in this case are not significantly in dispute. In 1988, Dr. Mamdouh Barakat ("Barakat") founded Systems.

App. at 3a. Systems is a software company that develops, manufactures, promotes, distributes and sells risk management and trading software to individuals or organizations wishing to trade various financial securities, including bonds, options, swaps and futures. In addition to its products, Systems also offers computer consulting, software development and training seminars. Traditionally, Systems' products were sold off-the-shelf on floppy disks or CDs. Today, however, its products are also available for downloading on the Internet. *Id.*; *App.* at 62a.

Like Systems, Software is a financial software company. Founded in 1992, Software sells financial risk systems used in financial planning. *App.* at 3a-4a. While Software's products are not identical to those of Systems, they are similar, they are sold to the same customers and they are sold through the same channels of trade. *App.* at 67a.

Since its inception, Systems has used the marks FSS and FINANCIAL SYSTEMS SOFTWARE in connection with its products and services.[2] Originally, the marks were used in Great Britain and Northern Ireland, but since 1989 their use has expanded to most financial centers in the world.[3] *App.* at 70a-71a.

Beginning in 1992, about four years after Systems first used its marks, Software began to use the marks FSS and

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2. The litigation below involved both marks, but Systems does not challenge here the lower courts' finding that FINANCIAL SYSTEMS SOFTWARE is generic and, therefore, not entitled to trademark protection.

3. At one point, in November, 1994, Systems assigned its FINANCIAL SYSTEMS SOFTWARE mark and goodwill to FNX, Ltd., a company owned by Farid Naib ("Naib"). The mark and goodwill, however, were assigned back to Systems in May, 1996. *App.* at 37a. The District Court did not rely upon these events as establishing abandonment and it is well established that assigning a mark does not constitute abandonment of the mark. The Court of Appeals did note that Systems "assigned the mark to a company [FNX, Ltd.] that was contractually bound not to use marks similar to those of SOFTWARE." *App.* at 11a. However, there is no evidence, or even suggestion, that Systems knew of this restriction when it assigned the mark to FNX and the restriction to which FNX was subject extended only to marks similar to the FINANCIAL SOFTWARE SYSTEMS mark which the court below found to be generic.

FINANCIAL SOFTWARE SYSTEMS in connection with its similar products. *App.* at 4a. Not surprisingly, this resulted not merely in a likelihood of confusion, but in actual confusion, among consumers and end users as to the origin of products bearing the FSS mark. *App.* at 36a.

Accordingly, on November 18, 1996, Systems filed an action against Software for trademark infringement, alleging intentional and unlawful use by Software of the marks FSS and FINANCIAL SOFTWARE SYSTEMS in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and in violation of Ohio state law prohibiting unfair competition and deceptive practices. *App.* at 37a. In response, Software asserted an identical counterclaim and, among other defenses, the affirmative defense that Systems had abandoned its trademarks. *Id.*[4] That defense ultimately proved dispositive in the courts below and it is the lower courts' treatment of this issue that gives rise to this Petition.

After discovery, both parties moved for summary judgment. The District Court denied Systems' motion and granted summary judgment in favor of Software on its affirmative defense of abandonment. *App.* at 35a.[5] Systems timely appealed the District Court's judgment and the Court of Appeals affirmed.

It is important to note that neither the District Court nor the Court of Appeals purported to determine that Systems failed to acquire rights in its FSS mark. Rather, the District Court determined that Systems had abandoned the mark by failing to use it continuously in commerce and the Court of Appeals affirmed on that basis. *App.* at 43a and 9a-11a, respectively.

The basis of this Petition is not that the District Court and Court of Appeals erred, but rather that their decisions

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4. The action, which was originally filed in the United States District Court for the Northern District of Ohio, was transferred to the District Court on May 12, 1997. On July 28, 1997, Systems voluntarily withdrew its claims under Ohio law. *App.* at 37a, n.4.

5. Despite this decision, the District Court, on the basis of admissions by Software, dismissed Software's counterclaim as frivolous. *App.* at 34a.

failed to apply the correct standards to their determination of abandonment. Specifically, the District Court failed to address or apply the correct substantive law, the correct standard of proof and the principle that the standard of proof must be taken into account in determining whether an issue is amenable to summary judgment. The Court of Appeals then perpetuated this situation by affirming the District Court. As a result, Systems received a hearing in name only, because the District Court did not even analyze or attempt to apply, despite being urged to do so, the various safeguards that this Court, Congress and other federal courts have put in place to prevent an unconstitutional forfeiture of Systems' valuable property rights.

First, with regard to the applicable substantive law on the issue of abandonment: The District Court premised its determination of abandonment upon its conclusion that Systems had, for "a period of over two years", beginning at some point in 1991 and ending in 1994, discontinued use of its FSS mark in certain advertisements. *App.* at 43a. In fact, and under established trademark law, "use" of a trademark for goods in advertising is not technical use (use in commerce) such as to establish property rights in the mark.[6] *Fashion World Co. v. Impressa Perosa, S.R.L.*, 139 F.3d 98 (2d Cir. 1988), *cert. denied*, 525 U.S. 826 (1998). Ignoring the fact that using a trademark in advertising is insufficient to establish protected use, the District Court held that the suspension of use in advertising can form the basis for a finding that use has been discontinued and that, if such "nonuse" lasts long enough, a presumption of intent not to resume use is raised. The District Court did not even address this point.

Nor did the District Court address the fact that the Lanham Act, as amended, requires three, not two, years of continuous nonuse to raise a presumption of abandonment. 15 U.S.C. § 1127. This is particularly significant in light of what

6. Use in advertising would, of course, constitute use of a service mark, and Systems employed FFS as a service mark as well as a mark used on or in connection with the sale of its products. The District Court failed to make any distinction between trademarks used on goods and service marks. *See App.* at 36a, n.2; *see also* 43a.

the record did *not* contain, i.e., evidence that Systems had an *actual* intent, not to "resume" use of its mark.[7]

Indeed, not only was there no evidence of actual intent to abandon, there was undisputed evidence that Systems not only meant to maintain its FSS mark but in fact employed it in a variety of ways during the supposed period of nonuse.[8] It is established trademark law that "Acts which unexplained would be sufficient to establish an abandonment may be answered by showing there was never an intention to give up and relinquish the right claimed." *Saxlehner v. Eisner & Mendelson Co.*, 179 U.S. 19, 31 (1900).

Thus, even if Systems' suspension of its use of the mark in certain advertisements could have been enough, without more, to establish an abandonment, its undisputed evidence of significant use of its FSS mark during the period 1991 - 1994 should, at a minimum, have precluded summary judgment on the issue of abandonment as a matter of law had the court applied the correct standard. Thus, while the District Court erred in viewing advertising use as technical use of the mark on goods, to the extent advertising or promotional "use" is significant, the record reflects that Systems employed the mark in many thousands of "mailshots" sent to potential customers in the United States and throughout the world during the 1991-1994 period. *App.* at 77a. In addition, and more importantly, the undisputed record established that Systems had in fact sold many products employing the FSS mark to numerous customers in the United States and elsewhere during the period of supposed nonuse. *App.* at 80a-138a.

These undisputed facts are of record and the District Court was fully aware of them. That being so, it appears that

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7. As discussed below, this Court has not addressed the question of whether the new, three-year requirement is applicable to cases brought after the effective date of the statute but involving supposed abandonments that took place prior to the statute's effective date. There appears to be a split in the federal circuit courts on this issue and Systems urges the Court to address this issue in the context of this Petition.

8. In addition to the evidence on this point discussed below, Barakat testified to Systems' intent to maintain its marks.

the District Court conflated and confused two related but separate standards - the standards of use necessary to acquire rights in a trademark and the standards that determine when a presumption of intent not to resume use of an established mark may arise from nonuse. Thus, while sporadic use may be insufficient to establish rights in a trademark, it is sufficient to preclude such a presumption. *See, e.g., Citibank N.A. v. Citibanc Group, Inc.*, 724 F.2d 1540, 1545 (11th Cir. 1984) (finding that the amount of use, although sporadic, justified finding the trademark owner "never intended to discontinue the name").

Section 45 of the Lanham Act, 15 U.S.C. § 1127, defines "abandonment" to require proof of two elements, nonuse and an intent not to resume use. In order for nonuse to constitute *prima facie* evidence of abandonment the Act requires continuous nonuse for the statutorily mandated period, now three consecutive years. 15 U.S.C. § 1127. Absent such continuous nonuse, no presumption of abandonment is permitted from the mere fact of nonuse.[9] Here, the District Court did not apply the correct standard, premising the presumption of intent not to resume use on what it viewed as proof of less than continuous use instead of, as required, proof of continuous nonuse.

With regard to the applicable standard of proof, Systems urged upon the District Court the argument that, because abandonment effects a forfeiture of valuable property rights, abandonment (i.e., nonuse and the intent not to resume use) must be established by strict proof (and, to justify summary judgment, by strict proof that is not controverted). As the leading commentator on trademark law has put it: "abandonment is in the nature of a forfeiture and must be strictly proved, proof of the statutory period of non-use sufficient to trigger the presumption must also be clear." 2 J. McCarthy,

9. This Court has long disfavored forfeitures based exclusively upon nonuse. Indeed, prior to enactment of the Lanham Act, in *Beech-Nut Packing Co. v. P. Lorillard Co.*, 273 U.S. 629 (1927), the Court found that even total nonuse of a mark for more than four years, resulting in a near-total loss of goodwill, was insufficient to support a finding of abandonment.

McCarthy on Trademarks and Unfair Competition § 17:21 at 14.2 (citing *P.A.B. Produits Et Appareils de Beaute v. Satinine Societa in Nome Collettivo di S.A. e M. Usellini*, 570 F.2d 328 (C.C.P.A. 1978)).

The District Court had a duty to apply this standard, as it has been adopted by the Court of Appeals. Indeed, the Court of Appeals was among the first to recognize the need for a higher standard of proof in trademark cases involving the affirmative defense of abandonment. In *United States Jaycees v. Philadelphia Jaycees*, 639 F.2d 134 (3d Cir. 1981), the Court of Appeals held that "abandonment [of a trademark], being in the nature of a forfeiture, must be strictly proved." *Id.* at 139 (citation omitted). The court again endorsed the need for a higher standard of proof to establish abandonment when it revisited this issue only five months ago. Quoting *United States Jaycees*, the Court of Appeals reiterated the "strict proof" standard applicable to abandonment. *Marshak v. Treadwell*, 240 F.3d 184, 198 (3d Cir. 2001).[10]

The standard of proof is significant. It is designed to protect property rights and has due process implications:

> The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to "instruct the factfinder con-

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10. Numerous other circuits have endorsed the same standard. *See, e.g., Citibank*, 724 F.2d at 1545 (citing *American Foods, Inc. v. Golden Flake, Inc.*, 312 F.2d 619, 625 (5th Cir. 1963)); *Wallpaper Mfrs., Ltd. v. Crown Wallcovering Corp.*, 680 F.2d 755, 761 (C.C.P.A. 1982) (citations omitted); *Prudential Ins. Co. v. Gibraltar Financial Corp.*, 694 F.2d 1150 (9th Cir. 1982) (citing *United States Jaycees, supra*, 639 F.3d at 139), *cert. denied*, 463 U.S. 1208 (1983); *but see On-Line Careline, Inc. v. America Online, Inc.*, 229 F.3d 1080, 1087 (Fed. Cir. 2000) (describing the "burden of persuasion" as "always remains with the [challenger] to prove abandonment by a preponderance of the evidence"). Like the Court of Appeals, these courts reason the "strict" standard is necessary because a finding of trademark abandonment results in a forfeiture. This point was highlighted by the Second Circuit in *Saratoga Vichy Spring Co. v. Lehman*, 625 F.2d 1037 (2d Cir. 1980). In *Saratoga*, the Second Circuit described abandonment as "a forfeiture of a property interest, [which] should be strictly proved, . . . and the statutory aid to such proof should be narrowly construed." *Id.* at 1044 (citation omitted).

> cerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication."

Addington v. Texas, 441 U.S. 418, 423 (1979) (quoting *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring)).

In most civil cases, the party bearing the burden of persuasion as to an issue must prove its point by a preponderance of the evidence. 2 C. McCormick, McCormick on Evidence § 340 at 424-428 (5th ed. 1999). A higher standard of proof is generally employed, however, where the courts have recognized a need for a "special standard of persuasion" in order to protect important rights. *See* McCormick on Evidence, *supra*, § 340 at 426. In the case of trademarks, the heightened standard of proof is an essential element of a trademark owner's protections against unreasonable forfeiture.

Finally, there is no question that this heightened standard of proof must be employed in determining whether an issue is amenable to summary adjudication. In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), the Court considered the appropriateness of summary judgment in a libel case in which the plaintiff's burden was to establish actual malice by clear and convincing evidence. The Court confirmed that the standard of proof is imported into the summary judgment process, stating that the issue to be decided in order to determine whether summary judgment was appropriate was "whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not." *Id.* at 255-56.

In this case, the District Court did not address the standard of proof either as applicable to the defense of abandonment generally or as applicable to Software's motion for summary judgment in its favor on that defense. Equally clearly, the court did not apply the requisite standard to either issue. Had it done so, it could not have found abandonment in the face of the *undisputed* evidence that, during the period upon

which abandonment was premised, Systems used its marks on and in connection with the sale of its products and services and in "mailshot" advertising (which was its principal form of advertising) and that Systems applied to register its marks in the UK[11] and in the face of its duty to draw all reasonable inferences in Systems' favor at the summary judgment stage.

In short, this Court, Congress and other federal circuit courts (including most importantly for the present purposes the Court of Appeals) have established a detailed framework for the analysis of claims of abandonment, but the District Court in this case ignored every element of that framework. It is Systems' submission that the District Court's total failure to employ the proper tools of adjudication was different in kind from a decision that employs those tools to come to an incorrect result, and created a proceeding that was so fundamentally unfair as to be inconsistent with the requirements of due process.

As to the Court of Appeals, it simply perpetuated this situation by affirming the District Court's decision, apparently upon precisely the basis that the District Court made it. Like the District Court, the Court of Appeals did not address the standard of proof required and did not analyze the standards that the District Court applied or should have applied in the context of the summary judgment applications addressed to it.

With regard to the Court of Appeals, however, Systems wishes to note one issue. In its original opinion, the Court of Appeals did not address the fact that the abandonment statute as amended requires three, not two, consecutive year of nonuse to raise a presumption of abandonment. As the Court of Appeals correctly notes, Systems, while it directed the court to the relevant statutory provision, did not specifically direct the court to the fact that it states that three, not two, years of consecutive nonuse are required in order to raise a presumption

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11. While the District Court may not have been bound by the findings in the UK trademark proceeding, it is worth noting that, in that proceeding, Systems was found to have used its marks continuously in commerce through 1996.

of intent not to resume use.[12] However, the Court of Appeals addressed this issue in its amended opinion in a footnote, which reads, in its entirety:

> In its petition for rehearing, SYSTEMS brings to our attention that the Lanham Act was amended in 1994 to provide that non-use for three years, rather than two years, constitutes a prima facie abandonment. We note that SYSTEMS did not refer to the Lanham Act amendment in its reply brief, even after SOFTWARE had claimed that non-use for two years showed prima facie abandonment, citing the 1976 Lanham Act. Despite this, we have independently reviewed the record, and we have "inferred from the circumstances," 15 U.S.C. § 1127 (2000), that SYSTEMS had abandoned the FSS mark.

App. at 9a-10a.

The Court of Appeals did not specify the "circumstances" from which it "inferred" abandonment under the statute. Accordingly, Systems would simply note that the record does not reflect "circumstances" that would support such an inference other than the purported nonuse relied upon by the District Court, the deficiencies of which have already been discussed at length. Further, the District Court did not find that the circumstances that it interpreted as nonuse continued for a period of three years but merely that they remained in effect for "a period of over two years".[13]

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12. Systems did address this issue in its Petition for Rehearing, but that petition was denied.

13. The proper application of the 1994 amendment to Section 45 of the Lanham Act (effective January 1, 1996) involves interesting and important issues, and an apparent split in the circuits, with respect to how the increased period required to establish the presumption of abandonment should be applied. The amendment, made in accordance with the Uruguay Round Agreements Act, Pub.L.No. 103-465, 108 Stat. 4809 (1994), codified at 15 U.S.C. § 1127, was in part designed to implement the Trade-Related Aspects of Intellectual Property Rights Implementation Act of 1994 ("TRIPS") portions of the General Agreement on Tariffs and Trade ("GATT"), a multilateral treaty of over 100 nations. Pursuant to Part II, Article 19 of TRIPS, "if use is required to maintain a registration" a mark may be cancelled only after a "period of at least three years of non-use".

REASONS FOR GRANTING THE PETITION

I. Fundamentally Unfair Proceedings Undermine The Administration of Justice

Systems submits that this is not a case about mere error. Mere (even if severe) error would be present had the lower courts addressed and attempted to apply the applicable standards to the issues in suit. They did not do so, with the result that Systems has been wrongfully deprived both of its valuable

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Marakesh Agreement Establishing the World Trade Organization, Annex IC; Agreement on Trade-Related Aspects of Intellectual Property Rights, Art. 19, Apr. 15, 1994, *reprinted in* The Results of the Uruguay Round of Multilateral Trade Negotiations — The Legal Texts 6-19, 365-403 (GATT Secretarial ed., 1994).

There currently exists an apparent split in the circuits as to whether the two or the three-year standard should be employed to establish *prima facie* case of abandonment in cases where, as here, the lawsuit was filed after the amendment of Section 45 but the alleged nonuse predated the effective date of the amendment, January 1, 1996. The Third, Seventh and Federal Circuits have applied, albeit in some cases without discussion, the two-year standard. *See, e.g., Marshak*, 240 F.3d at 198-99; *Rivard v. Linville*, 133 F.3d 1446, 1448 (Fed. Cir. 1998); *Rust Environment & Infrastructure, Inc. v. Teunissen*, 131 F.3d 1210, 1214 (7th Cir. 1997). (It is unclear whether the Court of Appeals' footnote in its amended opinion is intended to indicate that it believes the three-year standard should apply; it is also unclear whether such a decision would be in conflict with *Marshak*, which did not really address the issue). On the other hand, the Sixth Circuit has applied the three-year standard to actions involving alleged nonuse which predates the amendment but are filed after the amendment became effective. In *Kellogg Co. v. Exxon Mobil Corp.*, 209 F.3d 562, 576 (6th Cir. 2000), *cert. denied*, 121 S.Ct. 340 (2000), the court applied the three-year standard to an action filed in October, 1996. *See id.* (quoting the three-year language of § 1127). Similarly, the Ninth and Tenth Circuits have employed the three-year standard. *See Bishop v. Equinox Int'l Corp.*, 154 F.3d 1220 (10th Cir. 1998); *Committee for Idaho's High Desert, Inc. v. Yost*, 92 F.3d 814 (9th Cir. 1996). The Fourth Circuit's position is uncertain. In *Emergency One Inc. v. American FireEagle, Ltd.*, 228 F.3d 531 (4th Cir. 2000), the alleged nonuse occurred during the early 1990's, however, the action was not filed until 1996. *Id.* at 535-36. In its decision, the court opined that "[n]on-use for three consecutive years ... constitutes prima facie abandonment." *Id.* at 536. Nonetheless, the Fourth Circuit avoided the need to decide whether to apply the two or three-year standard by concluding under either standard the trademark owner rebutted the presumption. *Id.* at 536, n.1.

property rights and of the day in court to which it is entitled. There is a "serious question whether the [proceedings in this case] . . . subjected [Systems] . . . to manifestly unjust procedures, resulting in a miscarriage of justice." *Smith v. Phillips*, 455 U.S. 209, 222 (1982)(O'Connor, J., concurring). The interests of justice and the strong public interest in maintaining the fair administration of justice would be served by this Court's firm announcement that the federal courts must, on pain of denying litigants due process of law, apply those standards and protections that this Court, Congress and other binding authorities (in this case, the Court of Appeals) have established *ex ante* as being necessary to protect constitutional property rights.

II. Trademarks Are Valuable Property Rights Entitled To Due Process Protection And Forfeiture Of Such Rights Should Not Be Permitted, Particularly On Summary Judgment, Absent Strict Proof

In *Board of Regents v. Roth*, 408 U.S. 564 (1972), this Court described a property interest protected by due process as one whereby the claimant "clearly must have more than an abstract need or desire for it. [The claimant] must have more than a unilateral expectation of it. [The claimant] must, instead, have a legitimate claim of entitlement to it." *Id.* at 577.

Trademarks are a form of property entitled to due process protection. *See Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 259 (1916) (describing a trademark as being "a kind of property, of which the owner is entitled to the exclusive enjoyment to the extent that it has been actually used") (citing *McLean v. Fleming*, 96 U.S. 245, 252 (1878)); *see also* 1 McCarthy, *supra*, § 2:14 at 29-33. As recently as 1999, Justice Scalia observed that trademarks are the " 'property' of the owner because he can exclude others from using them." *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 673 (1999); *see also, Int'l Order of Job's Daughters v. Lindeburg & Co.*, 633 F.2d 912, 919 (9th Cir. 1980) (stating "[a] trademark is, of course, a form of business

property") (citing McCarthy, *supra*, §§ 2:6 - 2:7 (1973)), *cert. denied*, 452 U.S. 941 (1981); *TMT North America, Inc. v. Magic Touch GmbH*, 124 F.3d 876 (7th Cir. 1997) ("trademark rights are clearly analogous to property interests . . . giv[ing] a seller a property right in his mark of identification, appurtenant to his property rights in the goods he so marks . . . .", quoting *Walt West Enter., Inc. v. Gannett Co.*, 695 F.2d 1050, 1057 (7th Cir. 1982)) (internal quotations omitted).

Where, the law has determined that a trademark owner may not be subjected to forfeiture of its valuable property rights in a trademark absent strict proof of the elements necessary to establish the forfeiture, part of the process that is due the trademark owner is the application of that standard of proof. As this Court made clear in *Addington*, the standard of proof is, in this respect, embodied in the Due Process Clause as well as in the factfinding process. To deprive a litigant of its settled expectation that it has nothing to rebut, because no constitutionally adequate case for forfeiture has been made out, is to deprive that litigant of due process of law no less than the Petitioner in *Armstrong* was deprived of due process of law by being subjected to a burden of proof that he should not have had to shoulder.

CONCLUSION

The Court should grant this Petition for a Writ of Certiorari to confirm that a hearing must, if it is to comport with due process and avoid being fundamentally unfair, embody minimum standards of adherence to the applicable substantive legal standards, standards of proof and procedural safeguards designed to protect property owners against unconstitutional forfeitures.

Respectfully submitted,

/s/
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June 2001

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1008

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED,
Appellant

v.

FINANCIAL SOFTWARE SYSTEMS, INC.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 97-cv-03356)
District Judge: The Honorable Norma L. Shapiro

Argued September 11, 2000

Before: NYGAARD, ROTH, and GARTH, *Circuit Judges.*

O R D E R

The Memorandum Opinion previously filed in this case hereby amended. A revised Memorandum Opinion shall be issued forthwith.

It is so ordered.

/s/
United States Circuit Judge

DATE: 13 APR 2001

UNREPORTED – NOT PRECEDENTIAL

THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1008

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED,
Appellant

v.

FINANCIAL SOFTWARE SYSTEMS, INC.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 97-cv-03356)
District Judge: The Honorable Norma L. Shapiro

Argued September 11, 2000

Before: NYGAARD, ROTH, and GARTH, *Circuit Judges.*
(Filed 13 APR 2001)

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MEMORANDUM OPINION OF THE COURT

NYGAARD, *Circuit Judge.*

In this trademark infringement case, Appellant Financial Systems Software ("SYSTEMS") filed an action against defendant Financial Software Systems ("SOFTWARE"), claiming violation of the Lanham Act, 15 U.S.C. § 1125(a). SOFTWARE filed a counterclaim against SYSTEMS alleging the same violation. Both parties filed motions for summary judgement. SYSTEMS also filed a motion to present new evidence. The District Court granted SYSTEMS' motion to present new evidence, denied SYSTEMS' motion for summary judgement, and granted SOFTWARE's motion for summary judgement. We will affirm.

I. FACTS

SYSTEMS was founded in 1988 by Dr. Mamdouh Barakat. Since then, it has developed, manufactured, promoted, distributed, and sold risk management and trading software primarily to banks, investment groups, and other financial institutions. Its products include calculators, back room systems, and front room systems. They are used to model the interest rate markets and pricing of derivatives. Until 1998, SYSTEMS sold its products off-the-shelf on floppy disks or CDs. Today its products are available for downloading on the Internet.

SYSTEMS began using the unregistered marks "FSS" and "Financial Systems Software" to sell its products in 1988. Although SYSTEMS contends that it has used its marks continuously since their inception, we note that in 1990, an advertising consultant recommended that SYSTEMS stop using the "FSS" mark in its mass advertisements. The record indicates that Bakarat agreed, and SYSTEMS did not use the mark again until 1994.

SOFTWARE was founded on April 29, 1992 by Gerald Thurston, its president. The company sells financial risk sys-

tems used in financial planning. Its products are used by banks, traders, and risk managers to track foreign exchange and interest rate transactions, calculate risk and profit and loss, confirm trades, and produce general ledger accounting entries. The company installs its products on-site and then provides training.

Thurston founded SOFTWARE after the dissolution of FX Systems, Inc., a company he owned jointly with a man named Farid Naib. Before founding SOFTWARE, Thurston entered into an agreement with Naib where both parties agreed not to adopt confusingly similar corporate names in their individual, future business ventures. Thurston also hired an attorney to conduct a required corporate name search.

At the end of May 1992, Thurston was told about a company with a name similar to SOFTWARE's. In response, he hired attorneys to search for the name "FSS" in the United Kingdom Trademark Registry and the United Kingdom Corporate Name Registry. They found nothing. They also were unable to find any names that incorporated the terms "finance," "software," and "system." They did however find fifteen companies, including SYSTEMS, that used the terms "financial systems" or "financial software." Based on the high number, Thurston concluded that the terms were generic.

In late June of 1992, SOFTWARE adopted a new logo utilizing the "FSS" initials below a "bellshaped curve." SOFTWARE has used this logo ever since. As a result of the similarity of the two companies' names and logos, each has been mistaken for the other by customers.

In September of 1992, Thurston became aware of a SYSTEMS' advertisement that utilized the "FSS" initials. At approximately the same time, Barakat became aware of SOFTWARE through an advertisement in *Futures and Options World* magazine. Barakat did not take any actions because he "didn't like lawyers." About a year and a half later, in late November 1993, SYSTEMS applied for trademark protection of the "FSS" mark in the United States.

On August 17, 1994, Barakat sent a letter to SOFTWARE, and for the first time claimed trademark infringe-

ment. By November 1994, SYSTEMS had transferred all of its assets, including rights to the "FSS" and "Financial Systems Software" marks, to FNX Limited, a company owned by Naib. SYSTEMS agreed never to use the marks in the financial business services section again.

After announcing the deal, SYSTEMS' products were sold under the name "Financial Systems Software — a division of FNX limited." The initials "FSS" were used to market the company's products. In addition to SYSTEMS' orginal line, the newly merged company sold portfolio management systems that directly competed with SOFTWARE. In 1995, FNX Limited filed trademark applications in the United States and Great Britain.

In 1996, the contested marks were assigned back to SYSTEMS. Barakat renamed his company, "Mamdouh Barakat Risk Management, trading name Financial Systems Software (FSS) Limited." He adopted a logo containing a half globe and successfully registered both "MBRM" and "Mamdouh Barakat Risk Management" as trademarks.

On November 18, 1996, Barakat filed this trademark infringement suit against SOFTWARE. SOFTWARE made an identical counterclaim. On December 7, 1999, the District Court granted SOFTWARE's motion for summary judgement but dismissed its counterclaim against SYSTEMS. Although SYSTEMS has appealed, SOFTWARE has not cross-appealed.

II. DISCUSSION

As stated, this case involves a trademark infringement claim under the Lanham Act, 15 U.S.C. § 1125(a):

> Any person who . . . uses in commerce any word, term, name, symbol, or device, or any combination thereof . . . which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or

> commercial activities by another person, . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

A trademark infringement claim has three elements: (1) a valid and legally protectable mark, (2) that is owned by the plaintiff, and (3) a likelihood of confusion if the defendant uses the mark. *See Express Services, Inc. v. Careers Express Staffing Services*, 176 F.3d 183, 185 (3d Cir. 1999).

First, for a mark to be legally protectable, it must be "distinctive." *See A.J. Canfield Co. v. Honickman*, 808 F.2d 291, 296 (3d Cir. 1986). Courts determine a mark's distinctiveness by placing it into one of four categories: (1)arbitrary (or fanciful), (2) suggestive, (3) descriptive, and (4) generic. *See id.* Arbitrary marks "bear 'no logical or suggestive relation to the actual characteristics of the goods.'" *Id.* Suggestive marks "suggest rather than describe the characteristics of the goods." *Id.* Descriptive marks "describe a characteristic or ingredient of the article to which it refers," and generic marks "function as the common descriptive name of a product class." *Id.* Arbitrary and suggestive marks are considered distinctive and automatically qualify for protection. *See id.* at 297. Descriptive marks can qualify for protection, but only if consumers identify the mark with the claimant, thus providing secondary meaning. *See id.* Generic marks are never protected, even if a claimant can establish secondary meaning. *See id.*

Second, a claimant must show that it owns the mark in question. The first party who adopts and uses a trademark continuously is said to own that mark. *See Ford Motor Co. v. Summit Motor Products*, 930 F.2d 277, 297 (3d Cir. 1991). A claimant must demonstrate its use of a mark in commercial activity, and show that it has achieved significant market penetration. *See Lucent Information Management, Inc. v. Lucent Technologies, Inc.*, 186 F.3d 311, 316-17 (3d Cir. 1999).

Third, there must be a likelihood of confusion if another party were allowed to use the claimant's mark. *See A&H Sportswear Inc. v. Victoria's Secret Stores, Inc.*, 166 F.3d 197, 205 (3d Cir. 1999). If the parties' goods or services directly

compete with one another, the court "'need rarely look beyond the mark itself.'" *Id.* at 202.

The District Court granted summary judgment in favor of SOFTWARE. The court evaluated both of the marks that SYSTEMS claimed had been infringed. First, it held that "Financial Systems Software" was a generic mark and therefore ineligible for protection. Second, it held that "FSS" was arbitrary and thus eligible for protection. But, the Court found that the mark was first adopted and used *continuously* by SOFTWARE. SYSTEMS used the "FSS" mark prior to SOFTWARE, but it abandoned the mark in 1991. As a result, the Court found that SOFTWARE owned the mark. Because there was a likelihood of confusion, the District Court held that SYSTEMS could only use the "FSS" mark as an *abbreviation* of its name (rather than as a trademark). Based upon these findings, the court granted SOFTWARE's motion for summary judgment.

SYSTEMS raises three issues on appeal. The first is whether the term "Financial Systems Software" is generic and thus neither distinctive nor legally protectable. We conclude that it is generic. "The dominant principle for determining whether a term is generic is the primary significance test," which the District Court applied in this case. *A.J. Canfield*, 808 F.2d at 299. The test requires that a court determine whether "the primary significance of the term in the minds of the consuming public is not the product but the producer." *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111, 118, 59 S.Ct. 109, 113 (1938).

Before applying the primary significance test, however, a court must determine whether or not the alleged mark refers to a product category or "genus" (rather than a specific brand or "species"). *See A.J. Canfield*, 808 F.2d at 300 (the primary significance test "only becomes applicable after we have distinguished product genus from product brand."). If the alleged mark refers to a product genus, it is usually generic, even if consumers tend to associate the alleged mark primarily with the producer. *See id.* (noting that shredded wheat is a generic product genus, even though it is primarily associated with

Nabisco). In *A.J. Canfield*, our research "revealed no established test for differentiating between product brand and product genus." 808 F.2d at 303-04. As a result, we developed our own test:

> If a producer introduces a product that differs from an established product class in a particular characteristic, and uses a common descriptive term of that characteristic as the name of the product, then the product should be considered its own genus.

Id. at 305-06. We went on to explain that a product genus is generic if (1) a competitor needs to use the terms to describe its product and (2) "no commonly used alternative effectively communicates the same functional information." *Id.* at 306. In this case, the District Court, without describing its analysis, held that "Financial Systems Software" was a product genus.

Although this sort of inquiry has the potential to get complicated, fortunately here, the answer is fairly simple. Under our test in *A.J. Canfield*, or any application of common sense, financial systems software describes a broad category of products — i.e. software relating to financial systems. Each of the three words are common descriptive terms that describe characteristics of SYSTEMS' products.

The parties devote a significant portion of their briefs to this issue, but SYSTEMS fails to present any evidence that would justify our disagreeing with the District Court's conclusion. Nothing about the District Court's holding is erroneous. As such, the alleged mark "Financial Systems Software" should be considered generic, and because the term is generic, any evidence of secondary meaning is irrelevant.

The second issue is whether SYSTEMS abandoned the "FSS" mark, or failed to use it continuously, and therefore surrendered ownership of it. We conclude that it did.

In analyzing SYSTEMS' second claim, the District Court concluded that the "FSS" mark was arbitrary and that there was a likelihood of confusion. It still granted summary judgment in favor of SOFTWARE, however, because it concluded

that SYSTEMS had ceased using the mark for over two years, surrendering its ownership. During this time SOFTWARE adopted its "FSS" variant.

SYSTEMS challenges this finding on two grounds. First, SYSTEMS argues that the District Court applied the wrong legal standard for abandonment by incorrectly placing the burden of proof on SYSTEMS to prove that it had *not* abandoned the "FSS" mark and by failing to require a showing of SYSTEMS' *intent* to abandon the mark. Both parts of this argument are incorrect. Although the District Court's opinion is not greatly detailed, it notes that "a review of plaintiff's Exhibit 6, a very extensive assortment of advertisements by Financial Systems during its existence, includes no advertisements using the initials FSS from 1991 to January, 1994." It was SOFTWARE's burden to argue this deficiency in the record, which it did. The burden then shifted to SYSTEMS to produce evidence sufficient to establish a jury question. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24, 106 S.Ct. 2548, 2552-53 (1986). The District Court notes that SYSTEMS "has offered no examples of product labels, letterheads, or other uses proving continuous use from 1991 until 1994, a period of over two years."

SYSTEMS' intent argument is similarly flawed. The Lanham Act does require a two-part test of non-use and intent in order to show abandonment, *but* it provides that "non-use for two consecutive years shall be prima facie abandonment." *See* 15 U.S.C. § 1127 (1976); *United States Jaycees v. Philadelphia Jaycees*, 639 F.2d 134, 138 (3d Cir. 1981). Because the District Court properly concluded that SYSTEMS had ceased using the "FSS" mark for "a period of over two years," SOFTWARE did not need to provide any evidence to establish intent. SYSTEMS failed to rebut the prima facie case.[1]

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1. In its petition for rehearing, SYSTEMS brings to our attention that the Lanham Act was amended in 1994 to provide that non-use for three years, rather than two years, constitutes a prima facie abandonment. We note that SYSTEMS did not refer to the Lanham Act amendment in its reply brief, even after SOFTWARE had claimed that non-use for two years showed prima facie abandonment, citing the 1976 Lanham Act. Despite this,

Second, SYSTEMS challenges the District Court's conclusion that it ceased using the "FSS" mark from 1991 until 1994. SYSTEMS points to a number of examples in the record where it did include the "FSS" mark in company invoices, product manuals, brochures, and other various documents. SOFTWARE responds by arguing that in all of the limited instances in which SYSTEMS did use the alleged mark, it used it merely as an abbreviation rather than as a trademark, and the use was too sporadic to be considered "continuous" as required by the Lanham Act. *See Ford Motor Co.*, 930 F.2d at 297. Barakat himself admitted in his deposition that in August of 1990 he "went along with" a recommendation to replace "FSS" with "Financial Systems Software" in his advertisements.

Because SYSTEMS has presented some evidence of use of the "FSS" mark from 1988 until 1994, we must decide two questions: (1) did SYSTEMS' sporadic use of the "FSS" mark satisfy the "continuous" use requirement of the Lanham Act, and (2) did its decision to stop using the "FSS" mark in most, if not all, of its advertisements constitute non-use for the sake of abandonment. No clear standards seem to exist. On one hand, we noted in *U.S. Jaycees* that "even total, but temporary non-use of a name has, at times, been found insufficient to support a finding of abandonment." 639 F.2d at 139. On the other, *Lucent Information Management* dictates that a trademark must achieve significant market penetration before it is protected. *See* 186 F.3d at 317 (requiring "promotional efforts 'sufficiently public to identify or distinguish the marked goods . . . as those of the adopter of the mark.").

Here, we conclude that there is simply no way a reasonable jury could do anything more than speculate that SYSTEMS' intent was to develop and maintain the "FSS" mark as a viable and lasting trademark. SYSTEMS never attempted to

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we have independently reviewed the record, and we have "inferred from the circumstances," 15 U.S.C. § 1127 (2000), that SYSTEMS had abandoned the FSS mark.

stylize the mark in any significant fashion (other than occasionally displaying the initials diagonally on a grid); it made a documented decision to replace the mark with the company's full name in many, if not all, of its advertisements, and it assigned the mark to a company that was contractually bound not to use marks similar to those of SOFTWARE. This is all in marked contrast to SOFTWARE's actions, which consistently evidence an intent to adopt and continuously use the same mark. SOFTWARE designed a logo incorporating a normal curve in addition to its "FSS" initials, and it has used this logo without interruption. SYSTEMS admittedly did not use the "FSS" mark in the only advertisements that were readily available to Thurston when he was designing SOFTWARE's logo. In sum, appellant has failed to convince us that the record supports its contention that the District Court's decision should be reversed on this issue.

The final issue is whether the District Court could properly grant relief to SOFTWARE, and at the same time dismiss SOFTWARE's counterclaim as frivolous. The seemingly contradictory rulings are easily reconciled. SYSTEMS contends that the District Court granted SOFTWARE relief when it held that SOFTWARE's "FSS" logo was protected and that SYSTEMS could only use the "FSS" mark as an abbreviation.[2] SYSTEMS argues that this is inappropriate, because, in the same order, the District Court dismissed SOFTWARE's trademark infringement claim as frivolous. We conclude that this is a mere technicality, and not a reversible error.

The District Court dismissed SOFTWARE's claim after SOFTWARE admitted that SYSTEMS' use of its initials, "FSS," did not infringe upon its mark. In response to the District Court's questions, SOFTWARE indicated that it did not object to SYSTEMS' use of the "FSS" initials as long as it was permitted to continue using its logo. According to

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2. It also contends that the part of the decision that stated "[SYSTEMS] cannot preclude [SOFTWARE's] use of "FSS" or "FSS" with a bell curve," also constituted relief in favor of SOFTWARE. This is incorrect. This holding merely reflects the denial of SYSTEM's motion for summary judgment.

SOFTWARE, Thurston was "willing to take a live and let live approach." Their response simply reflected their belief that "the global litigiousness employed by Barakat and Financial Systems [is] inefficient, costly and pointless." *Id.* We conclude that the District Court's findings did *not* grant relief in favor of SOFTWARE, but were instead issues that had to be decided before it ruled on SYSTEMS' claim.

III. CONCLUSION

In summary, we conclude that the District Court's summary judgment is proper in all respects, and will be affirmed in its entirety.

TO THE CLERK:

Please file the foregoing opinion.

/s/

Circuit Judge

THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1008

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED,
Appellant

v.

FINANCIAL SOFTWARE SYSTEMS, INC.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 97-cv-03356)
District Judge: The Honorable Norma L. Shapiro

Argued September 11, 2000

Before: NYGAARD, ROTH, and GARTH, *Circuit Judges.*

JUDGMENT

This cause came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel on September 11, 2000.

On consideration whereof, it is now here ORDERED AND ADJUDGED by this Court that the order of the said District Court entered on December 9, 1999, be, and the same is hereby affirmed.

Costs taxed against appellant.

All of the above in accordance with the opinion of this Court.

ATTEST:

/s/

Clerk

Dated: 17 October 2000

Certified as a true copy and issued in lieu of a formal mandate on April 4, 2001

Teste:

/s/

Clerk, United States Court of Appeals for the Third Circuit

THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1008

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED,
Appellant

v.

FINANCIAL SOFTWARE SYSTEMS, INC.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. No. 97-cv-03356)

SUR PETITION FOR REHEARING

Before: BECKER, *Chief Judge*,
SLOVITER, MANSMANN, SCIRICA, NYGAARD,
ALITO, ROTH, MCKEE, RENDELL, BARRY, AMBRO,
FUENTES and GARTH, *Circuit Judges*[1]

The Petition for rehearing filed the Appellant in the above-entitled matter, having been submitted to the judges who participated in the decision of this court and to all other available circuit judges in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges in regular active service not

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1. Judge Garth's vote is limited to panel rehearing only.

having voted for rehearing by this court en banc, the Petition for Rehearing is hereby DENIED.

It is so ordered.

By the Court

/s/

United States Circuit Judge

DATE: 27 MAR 2001

THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1008

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED,
Appellant

v.

FINANCIAL SOFTWARE SYSTEMS, INC.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 97-cv-03356)
District Judge: The Honorable Norma L. Shapiro

Argued September 11, 2000

Before: NYGAARD, ROTH, and GARTH, *Circuit Judges.*

JUDGMENT

This cause came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel on September 11, 2000.

On consideration whereof, it is now here ORDERED AND ADJUDGED by this Court that the order of the said District Court entered on December 9, 1999, be, and the same is hereby affirmed.

Costs taxed against appellant.

All of the above in accordance with the opinion of this Court.

ATTEST:

/s/

Clerk

Dated: 17 October 2000

Certified as a true copy and issued in lieu of a formal mandate on January 22, 2001

Teste:

/s/

Clerk, United States Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

November 2, 2000

No. 00-1008

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED,
Appellant

v.

FINANCIAL SOFTWARE SYSTEMS, INC.
(E.D. of PA. Civil No. 97-cv-03356 (NLS))

Present: NYGAARD, ROTH and GARTH, *Circuit Judges.*

1. Motion by Appellant for enlargement of page limitation from 15 to 25 Pages for Petition for Rehearing En Banc, or in the alternative, for panel rehearing to be filed on or before 10/31/2000.

2. Response by Appellee in Opposition to the Motion for enlargement of page limitation.

3. Motion by Appellant under 28 U.S.C. § 2106 and Third Circuit LAR 27.4 to to reverse the order entering summary judgment in Appellant's favor on the claim of infringement of the "FSS" Trademark, or in the alternative, for remand on this issue, or in the alternative, to supplement the Petition for Rehearing with this motion.

4. Response by Appellee to the Motion to reverse the order entering summary judgment.

/s/

Anthony Infante 267-299-4916
Case Manager

Mandate is to be issued on 11/8/2000.

Petition for Rehearing received 10/31/2000.

Response to Motion to reverse order is received for the Court's Information Only pending disposition of the motion for extension of time to file response.

ORDER

The foregoing motions are denied

By the Court,

/s/

Circuit Judge

Dated: 22 JAN 2001

AWL/CC: SM
RLM
FAT

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

November 27, 2000

No. 00-1008

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED,
Appellant

v.

FINANCIAL SOFTWARE SYSTEMS, INC.
(E.D. of PA. Civil No. 97-cv-03356 (NLS))

Present: NYGAARD, ROTH and GARTH, *Circuit Judges.*

Motion by Appellee for an extension of time until 12/18/2000 in which to file a Response to the Motion to reverse the order entering summary judgment.

/s/

Anthony Infante 267-299-4916
Case Manager

Response to motion due 12/4/2000.

Mandate was to issue on 11/8/2000.

Petition for Rehearing received 10/31/2000.

Motion to reverse order was submitted to the merits panel on 11/16/2000.

Response to Motion to reverse order was received on 12/18/2000.

ORDER

The foregoing is granted

By the Court,

/s/

Circuit Judge

Dated: 22 JAN 2001

AWL/CC: SM
RLM
FAT

UNREPORTED – NOT PRECEDENTIAL

THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1008

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED,
Appellant

v.

FINANCIAL SOFTWARE SYSTEMS, INC.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
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District Judge: The Honorable Norma L. Shapiro

Argued September 11, 2000

Before: NYGAARD, ROTH, and GARTH, *Circuit Judges.*

(Filed: October 17, 2000)

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MEMORANDUM OPINION OF THE COURT

NYGAARD, *Circuit Judge.*

In this trademark infringement case, Appellant Financial Systems Software ("SYSTEMS") filed an action against defendant Financial Software Systems ("SOFTWARE"), claiming violation of the Lanham Act, 15 U.S.C. § 1125(a). SOFTWARE filed a counterclaim against SYSTEMS alleging the same violation. Both parties filed motions for summary judgment. SYSTEMS also filed a motion to present new evidence. The District Court granted SYSTEMS' motion to present new evidence, denied SYSTEMS' motion for summary judgment, and granted SOFTWARE's motion for summary judgment. We will affirm.

I. FACTS

SYSTEMS was founded in 1988 by Dr. Mamdouth Barakat. Since the, it has developed, manufactured, promoted, distributed, and sold risk management and trading software primarily to banks, investment groups, and other financial institutions. Its products include calculators, back room systems, and front room systems. They are used to model the interest rate markets and pricing of derivatives. Until 1998, SYSTEMS sold its products off-the-shelf on floppy disks or CDs. Today its products are available for downloading on the Internet.

SYSTEMS began using the unregistered marks "FSS" and "Financial Systems Software" to sell its products in 1988. Although SYSTEMS contends that it has used its marks continuously since their inception, we note that in 1990, an advertising consultant recommended that SYSTEMS stop using the "FSS" mark in its mass advertisements. The record indicates that Bakarat agreed, and SYSTEMS did not use the mark again until 1994.

SOFTWARE was founded on April 29, 1992 by Gerald Thurston, its president. The company sells financial risk sys-

tems used in financial planning. Its products are used by banks, traders, and risk managers to track foreign exchange and interest rate transactions, calculate risk and profit and loss, confirm trades, and produce general ledger accounting entries. The company installs its products on-site and then provides training.

Thurston founded SOFTWARE after the dissolution of FX Systems, Inc., a company he owned jointly with a man named Farid Naib. Before founding SOFTWARE, Thurston entered into an agreement with Naib where both parties agreed not to adopt confusingly similar corporate names in their individual, future business ventures. Thurston also hired an attorney to conduct a required corporate name search.

At the end of May 1992, Thurston was told about a company with a name similar to SOFTWARE's. In response, he hired attorneys to search for the name "FSS" in the United Kingdom Trademark Registry and the United Kingdom Corporate Name Registry. They found nothing. They also were unable to find any names that incorporated the terms "finance," "software," and "system." They did however find fifteen companies, including SYSTEMS, that used the terms "financial systems" or "financial software." Based on the high number, Thurston concluded that the terms were generic.

In late June of 1992, SOFTWARE adopted to a new logo utilizing the "FSS" initials below a "bellshaped curve." SOFTWARE has used this logo ever since. As a result of the similarity of the two companies' names and logos, each has been mistaken for the other by customers.

In September of 1992, Thurston became aware of a SYSTEMS' advertisement that utilized the "FSS" initials. At approximately the same time, Barakat became aware of SOFTWARE through an advertisement in *Futures and Options World* magazine. Barakat did not take any actions because he "didn't like lawyers." About a year and a half later, in late November 1993, SYSTEMS applied for trademark protection of the "FSS" mark in the United States.

On August 17, 1994, Barakat sent a letter to SOFTWARE, and for the first time claimed trademark infringe-

ment. By November 1994, SYSTEMS had transferred all of its assets, including rights to the "FSS" and "Financial Systems Software" marks, to FNX Limited, a company owned by Naib. SYSTEMS agreed never to use the marks in the financial business services section again.

After announcing the deal, SYSTEMS' products were sold under the name "Financial Systems Software — a division of FNX limited." The initials "FSS" were used to market the company's products. In addition to SYSTEMS' original line, the newly merged company sold portfolio management systems that directly competed with SOFTWARE. In 1995, FNX Limited filed trademark applications in the United States and Great Britain.

In 1996, the contested marks were assigned back to SYSTEMS. Barakat renamed his company, "Mamdouh Barakat Risk Management, trading name Financial Systems Software (FSS) Limited." He adopted a logo containing a half globe and successfully registered both "MBRM" and "Mamdouh Barakat Risk Management" as trademarks.

On November 18, 1996, Barakat filed this trademark infringement suit against SOFTWARE. SOFTWARE made an identical counterclaim. On December 7, 1999, the District Court granted SOFTWARE's motion for summary judgment but dismissed its counterclaim against SYSTEMS. Although SYSTEMS has appealed, SOFTWARE has not cross-appealed.

II. DISCUSSION

As stated, this case involves a trademark infringement claim under the Lanham Act, 15 U.S.C. § 1125(a):

> Any person who . . . uses in commerce any word, term, name, symbol, or device, or any combination thereof . . . which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or

> commercial activities by another person, . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

A trademark infringement claim has three elements: (1) a valid and legally protectable mark, (2) that is owned by the plaintiff, and (3) a likelihood of confusion if the defendant uses the mark. *See Express Service, Inc. v. Careers Express Staffing Services*, 176 F.3d 193, 195 (3d Cir. 1999).

First, for a mark to be legally protectable, it must be "distinctive." *See A.J. Canfield Co. v. Honickman*, 808 F.2d 291, 296 (3d Cir. 1986). Courts determine a mark's distinctiveness by placing it into one of four categories (1) arbitrary (or fanciful), (2) suggestive, (3) descriptive, and (4) generic. *See id.* Arbitrary marks "bear 'no logical or suggestive relation to the actual characteristics of goods.' " *Id.* Suggestive marks "suggest rather than describe the characteristics of goods." *Id.* Descriptive marks "describe a characteristic or ingredient of the article to which it refers," and generic marks "function as the common descriptive name of a product class." *Id.* Arbitrary and suggestive marks are considered distinctive and automatically qualify for protection. *See id.* at 297. Descriptive marks can qualify for protection, but only if consumers identify the mark with the claimant, thus providing secondary meaning. *See id.* Generic marks are never protected, even if a claimant can establish secondary meaning. *See id.*

Second, a claimant must show that it owns the mark in question. The first party who adopts and uses a trademark continuously is said to own that mark. *See Ford Motor Co. v. Summit Motor Products*, 930 F.2d 277, 297 (3d Cir. 1991). A claimant must demonstrate its use of a mark in commercial activity, and show that it has achieved significant market penetration. *See Lucent Information Management, Inc. v. Lucent Technologies, Inc.*, 186 F.3d 311, 316-17 (3d Cir. 1999).

Third, there must be a likelihood of confusion if another party were allowed to use the claimant's mark. *See A&H Sportswear Inc. v. Victoria's Secret Stores, Inc.*, 166 F.3d 197,

205 (3d Cir. 1999). If the parties' goods or services directly compete with one another, the court "need rarely look beyond the mark itself." *Id.* at 202.

The District Court granted summary judgment in favor of SOFTWARE. The court evaluated both of the marks that SYSTEMS claimed had been infringed. First, it held that "Financial Systems Software" was a generic mark and therefore ineligible for protection. Second, it held that "FSS" was arbitrary and thus eligible for protection. But, the Court found that the mark was first adopted and used *continuously* by SOFTWARE. SYSTEMS used the "FSS" mark prior to SOFTWARE, but it abandoned the mark in 1991. As a result, the Court found that SOFTWARE owned the mark. Because there was a likelihood of confusion, the District Court held that SYSTEMS could only use the "FSS" mark as an *abbreviation* of its name (rather than as a trademark). Based upon these findings, the court granted SOFTWARE's motion for summary judgment.

SYSTEMS raises three issues on appeal. The first is whether the term "Financial Systems Software" is generic and thus neither distinctive nor legally protectable. We concluded that it is generic. "The dominant principle for determining whether a term is generic is the primary significance test," which the District Court applied in this case. *A.J. Canfield*, 808 F.2d at 299. The test requires that a court determine whether "the primary significance of the term in the minds of the consuming public is not the product but the producer." *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111, 118, 59 S.Ct. 109, 113 (1938).

Before applying the primary significance test, however, a court must determine whether or not the alleged mark refers to a product category or "genus" (rather than a specific brand or "species"). *See A.J. Canfield*, 808 F.2d at 300 (the primary significance test "only becomes applicable after we have distinguished product genus from product brand."). If the alleged mark refers to a product genus, it is usually generic, even if consumers tend to associate the alleged mark primarily with the producer. *See id.* (noting that shredded wheat is a generic

product genus, even though it is primarily associated with Nabisco). In *A.J. Canfield*, our research "revealed no established test for differentiating between product brand and product genus." 808 F.2d at 303-04. At a result, we developed our own test:

> If a producer introduces a product that differs from an established product class in a particular characteristic, and uses a common descriptive term of that characteristic as the name of the product, then the product should be considered its own genus.

Id. at 305-06. We went on to explain that a product genus is generic if (1) a competitor needs to use the terms to describe its product and (2) "no commonly used alternative effectively communicates the same functional information." *Id.* at 306. In this case, the District Court, without describing its analysis, held that "Financial Systems Software" was a product genus.

Although this sort of inquiry has the potential to get complicated, fortunately here, the answer is fairly simple. Under our test in *A.J. Canfield*, or any application of common sense, financial systems software describes a broad category of products — i.e. software relating to financial systems. Each of the three words are common descriptive terms that describe characteristics of SYSTEMS' products.

The parties devote a significant portion of their briefs to this issue, but SYSTEMS fails to present any evidence that would justify our disagreeing with the District Court's conclusion. Nothing about the District Court's holding is erroneous. As such, the alleged mark "Financial Systems Software" should be considered generic, and because the term is generic, any evidence of secondary meaning is irrelevant.

The second issue is whether SYSTEMS abandoned the "FSS" mark, or failed to use it continuously, and therefore surrendered ownership of it. We conclude that it did.

In analyzing SYSTEMS' second claim, the District Court concluded that the "FSS" mark was arbitrary and that there was a likelihood of confusion. It still granted summary judg-

ment in favor of SOFTWARE, however, because it concluded that SYSTEMS had ceased using the mark for over two years, surrendering its ownership. During this time SOFTWARE adopted its "FSS" variant.

SYSTEMS challenges this finding on two grounds. First, SYSTEMS argues that the District Court applied the wrong legal standard for abandonment by incorrectly placing the burden of proof on SYSTEMS to prove that it had *not* abandoned the "FSS" mark and by failing to require a showing of SYSTEMS' *intent* to abandon the mark. Both parts of this argument are incorrect. Although the District Court's opinion is not greatly detailed, it notes that "a review of plaintiff's Exhibit 6, a very extensive assortment of advertisements by Financial Systems during its existence, includes no advertisements using the initials FSS from 1991 to January, 1994" It was SOFTWARE's burden to argue this deficiency in the record, which it did. The burden then shifted to SYSTEMS to produce evidence sufficient to establish a jury question. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24, 106 S.Ct. 2548, 2552-53 (1986). The District Court notes that SYSTEMS "has offered no examples of product labels, letterheads, or other uses proving continuous use from 1991 until 1994, a period of over two years."

SYSTEMS' intent argument is similarly flawed. The Lanham Act does require a two-part test of non-use and intent in order to show abandonment, *but* it provides that "non-use for two consecutive years shall be prima facie abandonment." *See* 15 U.S.C. § 1127 (1976); *United States Jaycees v. Philadelphia Jaycees*, 639 F.2d 134, 138 (3rd Cir. 1981). Because the District Court properly concluded that SYSTEMS had ceased using the "FSS" mark for "a period of over two years," SOFTWARE did not need to provide any evidence to establish intent. SYSTEMS failed to rebut the prima facie case.

Second, SYSTEMS challenges the District Court's conclusion that it ceased using the "FSS" mark from 1991 until 1994. SYSTEMS points to a number of examples in the record where it did include the "FSS" mark in company invoices, product manuals, brochures, and other various documents.

SOFTWARE responds by arguing that in all of the limited instances in which SYSTEMS did use the alleged mark, it used it merely as an abbreviation rather than as a trademark, and the use was too sporadic to be considered "continuous" as required by the Lanham Act. *See Ford Motor Co.*, 930 F.2d at 297. Barakat himself admitted in his deposition that in August of 1990 he "went along with" a recommendation to replace "FSS" with "Financial Systems Software" in his advertisements.

Because SYSTEMS has presented some evidence of use of the "FSS" mark from 1988 until 1994, we must decide two questions: (1) did SYSTEMS' sporadic use of the "FSS" mark satisfy the "continuous" use requirement of the Lanham Act, and (2) did its decision to stop using the "FSS" mark in most, if not all, of its advertisements constitute non-use for the sake of abandonment. No clear standards seem to exist. On one hand, we noted in *U.S. Jaycees* that "even total, but temporary non-use of a name has, at times, been found insufficient to support a finding of abandonment." 639 F.2d at 139. On the other, *Lucent Information Management* dictates that a trademark must achieve significant market penetration before it is protected. *See* 186 F.3d at 317 (requiring "promotional efforts 'sufficiently public to identify or distinguish the marked goods . . . as those of the adopter of the mark.").

Here, we conclude that there is simply no way a reasonable jury could do anything more than speculate that SYSTEMS' intent was to develop and maintain the "FSS" mark as a viable and lasting trademark. SYSTEMS never attempted to stylize the mark in any significant fashion (other than occasionally displaying the initials diagonally on a grid); it made a documented decision to replace the mark with the company's full name in many, if not all, of its advertisements, and it assigned the mark to a company that was contractually bound not to use marks similar to those of SOFTWARE. This is all in marked contrast to SOFTWARE's actions, which consistently evidence an intent to adopt and continuously use the same mark. SOFTWARE designed a logo incorporating a normal curve in addition to its "FSS" initials, and it has used this

logo without interruption. SYSTEMS admittedly did not use the "FSS" mark in the only advertisements that were readily available to Thurston when he was designing SOFTWARE's logo. In sum, appellant has failed to convince us that the record supports its contention that the District Court's decision should be reversed on this issue.

The final issue is whether the District Court could properly grant relief to SOFTWARE, and at the same time dismiss SOFTWARE's counterclaim as frivolous. The seemingly contradictory rulings are easily reconciled. SYSTEMS contends that the District Court granted SOFTWARE relief when it held that SOFTWARE's "FSS" logo was protected and that SYSTEMS could only use the "FSS" mark as an abbreviation.[1] SYSTEMS argues that this is inappropriate, because, in the same order, the District Court dismissed SOFTWARE's trademark infringement claim as frivolous. We conclude that this is a mere technicality, and not a reversible error.

The District Court dismissed SOFTWARE's claim after SOFTWARE admitted that SYSTEM's use of its initials, "FSS", did not infringe upon its mark. In response to the District Court's questions, SOFTWARE indicated that it did not object to SYSTEM's use of the "FSS" initials as long as it was permitted to continue using its logo. According to SOFTWARE, Thurston was "willing to take a live and let live approach." Their response simply reflected their belief that "the global litigiousness employed by Barakat and Financial Systems [is] inefficient, costly and pointless." *Id.* We conclude that the District Court's findings did *not* grant relief in favor of SOFTWARE, but were instead issues that had to be decided before it ruled on SYSTEMS' claim.

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1. It also contends that the part of the decision that stated "[SYSTEMS] cannot preclude [SOFTWARE's] use of "FSS" or "FSS" with a bell curve," also constituted relief in favor of SOFTWARE. This is incorrect. This holding merely reflects the denial of SYSTEM's motion for summary judgment.

III. CONCLUSION

In summary, we conclude that the District Court's summary judgment is proper in all respects, and will be affirmed in its entirety.

TO THE CLERK:

Please file the foregoing opinion.

/s/ _____
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FINANCIAL SYSTEMS SOFTWARE, Ltd.	:	CIVIL ACTION
	:	
v.	:	
	:	
FINANCIAL SOFTWARE SYSTEMS, Inc.	:	NO. 97-3356

ORDER

AND NOW, this 7th day of December, 1999, upon consideration of plaintiff's and defendant's cross-motions for summary judgment, all responses thereto, and after a hearing during which counsel for both sides were heard, and in accordance with the attached Memorandum, it is hereby ORDERED that:

1. Defendant's motion for summary judgment on Count I of Complaint is GRANTED.

2. Plaintiff's motion for summary judgment on Count I of the Complaint is DENIED.

3. Plaintiff's petition to present new evidence in support of its motion for summary judgment is GRANTED.

4. Judgment is entered in favor of defendant and against plaintiff on Count I of the Complaint.

5. Defendant's counterclaim is DISMISSED as frivolous.

6. Counts II and III of the Complaint having been withdrawn voluntarily, the Clerk is directed to mark this action CLOSED.

/s/ _____

S.J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FINANCIAL SYSTEMS SOFTWARE, Ltd.	:	CIVIL ACTION
v.	:	
FINANCIAL SOFTWARE SYSTEMS, Inc.	:	NO. 97-3356

MEMORANDUM and ORDER

Norma L. Shapiro, S.J. **December 7, 1999**

Plaintiff Financial Systems Software ("Financial Systems") filed an action against defendant ("Financial Software") for violation of the Lanham Act, 15 U.S.C. § 1125(a)[1] ("the Act"); defendant filed a counterclaim also alleging violation of § 1125(a). Before the court are cross-motions for summary judgment on plaintiff's Complaint, and plaintiff's petition to present new evidence in support of its summary judgment motion. For the reasons stated below, plaintiff's motion to present new evidence will be granted but its motion for summary judgment will be denied, and defendant's cross-motion for summary judgment will be granted. Defendant's counterclaim will be dismissed.

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1. The relevant portion of 15 U.S.C. § 1125(a) states in relevant part:

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which —

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

BACKGROUND

Plaintiff Financial Systems has sold a variety of software products in the securities industry under the unregistered marks[2] FINANCIAL SYSTEMS SOFTWARE and FSS since 1988 (Stip. Part ¶¶ 6-7), but Financial Systems did not use the FSS mark in advertising from 1991/1992 to 1994. The FSS mark of Financial Systems at first consisted of nothing more than the three letters together; the mark was later changed to include occasionally the three initials aligned diagonally on a grid, but Financial Systems also continued to use just the "FSS" initials.

Financial Systems products are used for financial risk management and trading. (Stip. Part I ¶¶ 23-26.) Until 1998, these products were on floppy disks or CD's, sold off-the-shelf and installed by the customer. (Stip. Part I ¶¶ 114-120.) Financial Systems is currently expanding its product line to include software identical to that sold by defendant Financial Software. (Pl. Supplement in Supp. of Mot. for Summ. J.) Plaintiff Financial Systems sells its products to banks, investment groups, and other financial institutions. (Pl. Br. Ex. 46.)

In 1992, defendant Financial Software began using the unregistered FINANCIAL SOFTWARE SYSTEMS and FSS marks to sell risk management software in the securities industry. (Stip. Part II ¶¶ 2, 18.) Defendant's FSS mark consists of the initials "FSS" below a Bell curve, a symbol used in defendant's field. (Def. Br. at 11.) Defendant's products are used for trading, calculation of interest rates, and risk management. (Def. Br. at 9.) This software is sold to the same customers as those of Financial Systems, (Stip. Part II ¶ 25), and installed on-site. (Def. Br. at 9.) Shortly after Financial Software began using these marks, it received several telephone calls from customers who were attempting to call plaintiff Financial Systems. (Stip. Part II ¶¶ 26-29.)

In October, 1994, Financial Systems assigned its marks and goodwill to FNX Ltd., a company owned by Farid Naib, a former business partner of Financial Software's president,

2. The term "mark" includes the terms "trademark," "service mark," and "trade dress," unless otherwise stated.

Gerald Thurston, Jr. (Stip. Part I. ¶¶ 22, 80-84.) In May, 1996, FNX Ltd. assigned the marks and their goodwill to Financial Systems, (Stip. Part I ¶ 102) and Financial Systems "stepped into the shoes" of FNX Ltd.[3]

Dr. Mamdouh Barakat, President of Financial Systems, first became aware of defendant's use of FINANCIAL SOFTWARE SYSTEMS and FSS in 1992/1993. (Stip. Part I ¶ 43.) In August, 1994, he sent defendant a letter requesting it to cease using the marks. (Stip. Part I ¶ 64.) In August, 1996, plaintiff began using new registered marks: "MBRM" and "Mamdouh Barakat Risk Management." (Stip. Part I ¶¶ 108-09.)

On November 18, 1996, Financial Systems, filing this action against Financial Software, alleged false representation under 15 U.S.C. § 1125(a), common law trade infringement, and violation of Ohio's trademark laws. Financial Software filed a counterclaim for violation of § 1125(a). After discovery, both parties have moved for summary judgment on Count I of the Complaint.[4]

DISCUSSION

I. Standard of Review

Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is

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3. A mark is usually not abandoned if the owner assigns the mark with its goodwill, *see Clark & Freeman Corp.*, 811 F. Supp. 137, 139 (S.D.N.Y. 1993); the assignee of the mark "steps into the shoes" of the assignor. *See id.*

Defendant asserts plaintiff abandoned its marks by selling them to Naib, who could not use them because of a non-competition agreement between himself and Thurston. Since Naib could not legally use these marks when he purchased them, defendant argues that Naib had no rights in the marks to sell to plaintiff. Whether the trademark rights purchased by Naib are inchoate until resold to plaintiff, need not be decided to resolve the motions.

4. Plaintiff voluntarily withdrew Count II (common law infringement) and III (infringement under Ohio law) on July 28, 1997.

no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A defendant moving for summary judgment bears the initial burden of demonstrating there are no facts supporting the plaintiff's claim; then the plaintiff must introduce specific, affirmative evidence there is a genuine issue for trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-324 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The court must draw all justifiable inferences in the nonmovant's favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Id.* at 248. The nonmovant must present sufficient evidence to establish each element of its case for which it will bear the burden at trial. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986).

The parties in this action, in filing cross-motions for summary judgment, concede there are no genuine issues of material fact, and the only issues are matters of law for the court to decide.

II. Trademark Infringement Law

The elements of trademark infringement are: (1) a valid and legally protectible mark; (2) ownership of the mark; and (3) likelihood of confusion concerning the origin of the goods or services when used by the other party. *See Fisons Horticulture, Inc. v. Vigoro Indus., Inc.*, 30 F.3d 466, 472 (3d Cir. 1994); *Ford Motor Co. v. Summit Motor Products, Inc.*, 930 F.2d 277, 291 (3d Cir. 1991); *Opticians Ass'n of America v. Independent Opticians of America*, 920 F.2d 187, 192 (3d Cir. 1990).

A. Validity and Protectibility of a Mark

A mark is only protected by the Lanham Act if it is "distinctive." *See Specialty Measurements, Inc. v. Measurement Systems, Inc.*, 763 F. Supp. 91, 94 (D.N.J. 1991). A mark may fall into one of four categories: arbitrary or fanciful, suggestive, descriptive, and generic. *A.J. Canfield v. Honickman*, 808 F.2d 291, 296 (3d Cir. 1986). If the mark is arbitrary or suggestive, it is considered inherently distinctive and automatically protectible. *Id.* at 297; *Specialty Measurements*, 763 F. Supp. at 94. If the mark is descriptive, it is only protected if it has acquired secondary meaning. *A.J. Canfield*, 808 F.2d at 297. A generic mark is not protected. *Id.* Because the marks at issue are unregistered, the party seeking protection has the burden of proving that the mark is arbitrary, suggestive, or descriptive. *See id.*

A mark is considered arbitrary if it "bear[s] 'no logical or suggestive relation to the actual characteristics of the goods.' " *Id.* at 296 (quoting *Keebler Co. v. Rovira Biscuit Corp.*, 624 F.2d 366, 374 n. 8 (1st Cir. 1980)); a suggestive mark "suggest[s] rather than describe[s] the characteristics of the goods." *Id.*

A descriptive mark "describe[s] a characteristic or ingredient of the article to which it refers." *A.J. Canfield*, 808 F.2d at 296. For a descriptive mark to be protected, the owner of the mark must demonstrate that the mark has gained secondary meaning; "[s]econdary meaning exists when the trademark is interpreted by the consuming public to be not only an identification of the product, but also a representation of the product's origin." *Scott Paper Co. v. Scott's Liquid Gold, Inc.*, 589 F.2d 1225, 1228 (3d Cir. 1978).

A generic mark is not protected because the mark is "the common descriptive name of a product class." *A.J. Canfield*, 808 F.2d at 296. The purpose of trademark protection is to protect the public from confusion and "enabl[e] the buyer to distinguish the goods of one producer from the goods of others." *Id.* at 304. Generic marks are not protected because com-

petitors must use these words to describe the product; to hold otherwise would stifle competition. *See id.* at 304-05.

B. Ownership of a Mark

To prevail under the Act, the party must show that it owns the mark in question. The mark belongs to the party who is the first adopting and continuously using the mark. *See Ford Motor*, 930 F.2d at 297 (citing *Tally-Ho Inc. v. Coast Community College Dist.*, 889 F.2d 1018, 1022-23 (11th Cir. 1990)). Trademark rights are acquired "through actual prior use in commerce." *Tally-Ho, Inc.*, 889 F.2d at 1022 (citing *United States v. Steffens*, 100 U.S. 82 (1879)). Because trademark rights arise only in connection with commercial activity, "actual and continuous use is required to acquire and retain a protectible interest in a mark." *Id.* at 1022-1023 (footnote omitted). The party asserting ownership of the trademark must present evidence that the trademark has achieved significant market penetration; sales volume must be more than *de minimus*. *See Lucent Information Management, Inc. v. Lucent Technologies, Inc.*, No. 98-7203, slip. op. at 10 (3d Cir. Aug 3, 1999) (holding limited use of a mark did not constitute prior use in commerce sufficient to establish rights in the mark).

For either party to obtain trademark rights in the FSS mark, it must have used the mark as more than an abbreviation for the company's or product's name; initials as an abbreviation are merely shorthand for another name or mark rather than a separate mark with a distinct meaning. To gain protection, a party must have used the initials, like any other trademark, to show the source of its goods or services. *See A.J. Canfield*, 808 F.2d at 304.[5]

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5. Defendant raises the issue whether plaintiff's original use of the FSS initials was to indicate source or merely as an abbreviation for "Financial Systems Software." Because this court finds that defendant presently owns the trademark rights to its FSS mark, and cannot be precluded from using its mark by plaintiff, this court need not reach the issue of Financial System's original use of the initials.

C. Likelihood of Confusion

The court must consider the likelihood of confusion to the consuming public if there is a valid, protectible mark.[6] If parties use a mark concurrently and their goods directly compete with each other, the court will "rarely look beyond the mark itself." *A&H Sportswear Inc. v. Victoria's Secret Stores, Inc.*, 166 F.3d 197, 202 (3d Cir. 1999) (quoting *Interpace Corp. v. Lapp, Inc.*, 721 F.2d 460, 462 (3d Cir. 1983)); *see Fisons Horticulture, Inc.*, 30 F.3d at 472. If the goods or services at issue do not directly compete in the same market, the court weights the relevant factors discussed in *Scott Paper*, 589 F.2d at 1229:

> (1) the degree of similarity between the owner's mark and the alleged infringing mark;
> (2) the strength of owner's mark;
> (3) the price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase;
> (4) the length of time the defendant has used the mark without evidence of actual confusion arising;
> (5) the intent of the defendant in adopting the mark;
> (6) the evidence of actual confusion;
> (7) whether the goods, though not competing, are marketed through the same channels of trade and advertised through the same media;
> (8) the extent to which the targets of the parties' sales efforts are the same;
> (9) the relationship of the goods in the minds of the public because of the similarity of function; and
> (10) other facts suggesting that the consuming public might expect the prior owner to manufacture a product in the defendant's market."

Scott Paper Co., 589 F.2d at 1229.

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6. Plaintiff Financial Systems argued in its brief that a "possibility of confusion" standard governs the alleged infringement because defendant is new to the United States market. (Pl. Br. at 21-22). The Court of Appeals has since held "that the appropriate standard for determining trademark infringement under the Lanham Act is the likelihood of confusion." *A&H Sportswear Inc. v. Victoria's Secret Stores, Inc.*, 166 F.3d 197, 205 (3d Cir. 1999).

III. PLAINTIFF'S COMPLAINT

A. FINANCIAL SYSTEMS SOFTWARE Mark

For a party to prove that its mark is distinctive (not generic), it must "show that the primary significance of the term in the minds of the consuming public is not the product but the producer." *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111, 118 (1938), *adopted in* 15 U.S.C. § 1064 (1994) (applying to petitions for cancellation of trademarks). The court looks at a mark as a whole, not the individual words. *Technical Pub. Co. v. Lebhar-Friedman, Inc.*, 729 F.2d 1136, 1140 (7th Cir. 1984).

Plaintiff has produced evidence it has goodwill in the mark, but that does not in itself establish primary significance. FINANCIAL SYSTEMS SOFTWARE defines a particular product genus: software pertaining to financial systems. Plaintiff's product has been defined as a "financial calculator," (Def. Br. at 3), "back room systems" (Pl. Reply Br. at 16), "pricing sheets" (Stip. Part I ¶ 23), and "small systems" (Stip. Part I ¶ 23), but these products are all financial systems software, regardless of source. *Cp. Technical Pub. Co.*, 729 F.2d at 1136 ("Software News" is a generic mark). In one of the exhibits submitted by plaintiff, the term "systems software" is used as a volume heading for "The Software Users Year Book 1991." (Pl. Br. Ex. 6). By adding the adjective "financial" to its name, an adjective easily used to describe the type of "systems software," plaintiff did not make the mark less generic. Because FINANCIAL SYSTEMS SOFTWARE is generic, it is unprotected under the Act. Plaintiff presents evidence of secondary meaning, but such evidence is irrelevant if the mark is generic. *See A.J. Canfield*, 808 F.2d at 297.

B. FSS Mark

1. Validity and Protectibility of the Mark

The FSS mark is arbitrary because it is a symbol with no particular meaning or relation to the characteristics of the goods sold. *See Specialty Measurements*, 763 F. Supp. at 94.

When a consumer sees "FSS," the characteristics of the product do not immediately come to mind, nor is the nature of the goods suggested. "FSS," an arbitrary mark, is inherently distinctive and need not have secondary meaning to be protectible.

2. Ownership of the Mark

Plaintiff clearly began using the initials "FSS" first. Plaintiff began using the initials in the United States in January, 1989. (Stip. Part I ¶ 7.) The mark was used in the 1991/1992 Mitsubishi Finance Risk Directory, (Stip. Part II ¶ 34.), but was not used in a number of advertisements beginning in 1990. (Stip. Part I ¶ 16; Pl. Br. Ex. 6.) In 1991, plaintiff's advertisements ceased to include the initials; a review of plaintiff's Exhibit 6, a very extensive assortment of advertisements by Financial Systems during its existence, includes no advertisement using the initials "FSS" from 1991 to January, 1994. (Pl. Br. Ex. 6.) Plaintiff has offered no examples of product labels, letterhead, or other uses proving continuous use from 1991 until 1994, a period of over two years. When plaintiff resumed use of "FSS," it sometimes used a changed mark displaying the initials diagonally on a grid.

Plaintiff ceased to use the "FSS" initials as defendant began the use of its FSS mark in June, 1992. Financial Software has continuously used its mark from June, 1992, until the present time. Because plaintiff ceased to use "FSS" for over two years, its use was not continuous. Defendant was the first to adopt and use "FSS" continuously as an integral part of its mark; defendant owns its FSS mark with the Bell curve.

3. Likelihood of Confusion

The products of both parties in this action directly compete. Parties sell to the same customers and advertise in the same magazines. (Stip. Part II ¶¶ 15-17, 25, 43-44). In October, 1998, plaintiff introduced a new product similar to defendant's product. (Pl. Supplement in Supp. of Mot. for Summ. J. Ex. A.) Therefore, the court must determine whether there is a likelihood of confusion.

The FSS marks in this action are almost identical; they use the same three initials, "FSS." Defendant's mark shows the initials below a Bell curve. Plaintiff's mark uses the initials either without graphics or diagonally on a grid. This distinction between the graphics of the marks is not sufficiently strong to overcome the likelihood of confusion inherent in the marks.

The consuming public could very well assume that the products came from the same source because the FSS marks are almost identical. The parties are in similar channels of trade and sell to many of the same customers (Stip. Part II ¶ 25); they advertise in the same magazines. (Stip. Part II ¶¶ 15-17, 43-44.) Even if the goods may not be identical, they are used in the same industry. (Pl. Br. Exs. 46-47.) Potential customers are sophisticated purchasers who would understand the differences in the products the parties supply, but these other factors outweigh this sophistication. Actual confusion has occurred, beginning in 1992: several telephone calls intended for Financial Systems were received by Financial Software. (Stip. Part II ¶¶ 26-29.) A consumer could easily conclude that the different products came from the same source.

Financial Systems may not use Financial Software's FSS/Bell curve mark but may continue to use the initials "FSS" as an abbreviation for the name "Financial Systems Software" without the graphic component. Financial Software admits such a use will not cause a likelihood of confusion with its FSS/Bell curve mark.

IV. COUNTERCLAIM

Defendant's counterclaim alleged Financial Systems infringed on its FINANCIAL SOFTWARE SYSTEMS and FSS mark with the Bell curve.

The FINANCIAL SOFTWARE SYSTEMS mark is also generic, as defendant admitted at oral argument. The products Financial Software sells are installed in a computer and used for trading, calculation of interest rates, and risk management;

they may all be characterized as "software systems" used in the financial field. The term "software systems" is used to describe a type of product used with a computer; the adjective "financial" merely distinguishes this subset of "software systems" from that used in other fields, i.e., legal or medical software systems.

Defendant Financial Software also admitted at oral argument that its continued use of the FSS mark with the Bell curve did not preclude Financial Systems from using the initials "FSS." Since defendant admitted on the record that its counterclaim for plaintiff's trademark infringement of the marks "FINANCIAL SOFTWARE SYSTEMS" AND "FSS" initials without the Bell curve is without merit and gave no valid reason for its assertion, the counterclaim will be dismissed as frivolous.

V. PLAINTIFF'S PETITION TO PRESENT NEW EVIDENCE

Plaintiff requests leave to submit as "new evidence" a September 8, 1999 decision of the British Trademark Office ("the Office") denying Financial Software's opposition to Financial System's registration of the "FSS" mark in the United Kingdom. What Financial Systems describes as new evidence is actually supplemental legal authority involving the same parties; it wishes to make a collateral estoppel argument with respect to the issues addressed in the decision.

Financial Systems points to those parts of the decision finding that 1) the initials "FSS" have not been used by any other party as a generic description of financial software systems or services; 2) there was no evidence of any use in the relevant trade of the letters "FSS"; 3) the price disparity between the parties' respective products was not enough to defeat a likelihood of confusion; and 4) the assignment by Financial Systems to FNX Ltd. and FNX's efforts to register the FSS mark were not taken in bad faith.

With respect to the first issue, this court finds the FINANCIAL SYSTEMS SOFTWARE mark, not the FSS mark, is

generic. The Office's finding that no other party besides Financial Systems and Financial Software has used the letters "FSS" as a generic description of financial software systems or services, (Plaintiff's Petition to Present New Evidence Ex. B at ¶ 8(f)), does not contradict our finding that the defendant was the first to adopt and use FSS continuously in the United States. Plaintiff mischaracterizes the second excerpt of the Office decision it cites by quoting only part of the sentence, which reads, "*Other than by the parties to these proceedings*, there is no evidence of any use in the relevant trade of the letters FSS." (Plaintiff's Petition to Present New Evidence Ex. B at ¶ 47 (emphasis added).) This section of the opinion addressed Financial Software's argument about the likelihood that other companies would use the same or a similar trademark and does not mandate a different result than reached here. The third and fourth issues may similarly be disregarded since neither necessarily contradicts this court's findings.

CONCLUSION

The FINANCIAL SYSTEMS SOFTWARE and FINANCIAL SOFTWARE SYSTEMS marks are generic and unprotected. Financial Software's FSS mark with the Bell curve is arbitrary and protected. A likelihood of confusion exists if both parties continue to use this "FSS" mark. Financial Systems cannot preclude Financial Software's use of "FSS" or "FSS" with a Bell curve; Financial Systems may continue to use only the "FSS" initials (without a Bell curve) as an abbreviation. Defendant's arguments regarding equitable defenses are moot.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED	:	CIVIL ACTION NO. 97-CV-3356
vs.	:	
FINANCIAL SOFTWARE SYSTEMS, INC.	:	HON. NORMA L. SHAPIRO

FACTUAL STIPULATIONS OF THE PARTIES—PART I

Plaintiff Financial Systems Software (U.K.) Ltd., by and through its counsel Frederick A. Tecce, Esquire, and Defendant Financial Software Systems, Inc. by and through its counsel, Richard L. McMonigle, Esquire, HEREBY STIPULATE AND AGREE to the following facts:

1. Dr. Mamdouh Barakat resides in London and is a citizen of the United Kingdom.

2. Plaintiff has never had an office in the United States.

3. All of the staff of Financial Systems Software (UK) are London based and have no contact with the USA. They do not travel or have any origins or links with the USA.

4. Financial Systems Software develops its clients in numerous other countries from its office in London, using mass marketing techniques.

5. Dr. Barakat has a Master's degree, received in 1987, and a Ph.D., received in 1992.

6. In December 1988, Dr. Barakat decided to go into business for himself. He purchased a dormant corporation in the United Kingdom called "Solar Crown Limited".

7. On January 25, 1989, the name of "Solar Crown Limited" was changed to Financial Systems Software (UK) Limited.

8. At the time Financial Systems Software (UK) Limited was founded, Dr. Barakat took no steps to register his company's name or the "FSS" initials as a protected trademark.

9. Dr. Barakat did not believe that registering for a trademark was a priority when he was just starting his company.

10. At that time, he was more interested in copyrighting his software program.

11. Dr. Barakat did not seek any legal help with regard to trademark laws at the time he founded his company.

12. Dr. Barakat did not believe that trademarks were a priority at that time; he felt the civil laws of the world would protect him. His early priorities were setting up his company, getting money, and getting paid by clients.

13. Dr. Barakat was more concerned with surviving for five years rather than protecting his company's name five years down the road.

14. Plaintiff's alleged "FSS" mark is simply three capital letters together; it is not stylized in any fashion.

15. Plaintiff states that "FSS" stands for Financial Systems Software.

16. In August 1990, plaintiff began utilizing advertisements in magazines which did not utilize an "FSS" mark. This was done at the recommendation of a woman who designed advertisements.

17. An example of an advertisement by plaintiff in Risk Magazine in November 1990 is attached hereto as Exhibit "1".

18. In January 1994, plaintiff utilized advertisements in trade magazines which did not utilize an FSS mark. An example of such an ad in the January 1994 issue of Risk Magazine is attached hereto as Exhibit "2".

19. The two biggest magazines which plaintiff advertised in were Risk Magazine and Futures and Options World.

20. In January 1988, Gerald Thurston, Jr. left his position at GAF and went to work for a company known as FX Systems.

21. At that time, one of the principals of FX Systems was Farib Naib.

22. On January 1, 1991, Thurston became a fifty percent owner of FX Systems; Naib owned the other 50%.

23. FX Systems was in the business of providing financial technology to banks and other institutions, from financial calculators, to pricing sheets to small systems.

24. A "calculator" is a mechanism for pricing a financial instrument, a financial product, or a financial derivative.

25. "Pricing sheets" are subsets of the broader classification of calculators; "pricing sheets" tend to price a variety of financial instruments on one page.

26. "Small systems" not only price whatever a person tends to be looking at, they actually store information about financial instruments that were actually traded. They store descriptive information about financial transactions. They are a combination of a data base and the calculators.

27. By April 1992, disagreements had arisen between Thurston and Naib concerning the direction of FX Systems.

28. On Friday, April 24, 1992, during a meeting in Farid's attorney's office in Philadelphia, discussions were had between Thurston and Naib about terminating FX Systems.

29. Another meeting was held between Naib and Thurston at Naib's attorney's office on Monday, April 27, 1992, by the end of which meeting Naib and Thurston had decided to terminate the company FX Systems.

30. Thurston formed a new company—Financial Software Systems, Inc. (the defendant in this action).

31. Naib also formed a new company—FNX Limited.

32. Thurston's new company, Financial Software Systems, Inc., was incorporated April 29, 1992.

33. At the time of the split-up of FX Systems, Naib has stated that he did not know about the plaintiff company, and did not consider the plaintiff company to be a competitor of FX Systems.

34. At the time of the break-up of FX Systems and the setting up of Financial Software Systems, Inc. in April 1992, Thurston has stated that he had never heard of plaintiff's business.

35. Naib and Thurston entered into formal agreements to dissolve FX Systems and designate ownership of computer software products and all rights thereto.

36. Naib and Thurston entered into an "AGREEMENT TO LIQUIDATE AND DISSOLVE FX SYSTEMS, INC. which is attached hereto as Exhibit "3".

37. The "Agreement to Liquidate and Dissolve EX Systems, Inc." provides in part as follows:

> This Agreement is made and entered into effective May 1, 1992 by and between Farid A. Naib . . . and Gerald H. Thurston, Jr. . . . .
>
> WHEREAS, the parties have determined that it is in their individual best interests and the best interests of the company to liquidate and dissolve the company as promptly as possible; and
>
> WHEREAS, each party contemplates forming a new corporation to engage in activities similar to those conducted by the company . . . .
>
> NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:
>
> 1. *Cease operations*
>
> (a) The Company [FX Systems, Inc.] shall cease operations effective 12:00 Midnight Friday, May 1, 1992 . . . .
>
> (b) The Parties shall destroy any and all remaining marketing materials of the Company. The Parties shall not transact business as or incorporate either of the new corporations as FX Systems, Inc. or any name

confusingly or deceptively similar thereto. Farid and Jerry specifically agree that Farid's use of the company and trade name "FNX, Ltd." ("FNX") and Jerry's use of the company and trade name "Financial Software Systems, Inc." ("FSS") are not uses of names that are confusingly similar to FX Systems, Inc.

See Exhibit "3".

38. Naib and Thurston and FX Systems, Inc. entered into an "Agreement of Ownership of Computer Software Products and All Rights Thereto" attached hereto as Exhibit "4".

39. The "Agreement of Ownership of Computer Software Products and All Rights Thereto" provides in part as follows:

> This Agreement made and entered into as of this first day of May, 1992 by and between:
>
> FX SYSTEMS, INC. . . . ;
>
> Gerald H. Thurston . . . ; and
>
> Farid A. Naib . . . .

NOW, THEREFORE, for and in consideration of the foregoing premises and the following mutual covenants . . . the parties intending to be legally bound do hereby agree as follows:

> 2. Thurston and Naib agree that each shall be co-owners, without right of survivorship, of the Computer Software Products and each shall have an undivided equal interest in and to the entire Computer Software Products.
>
> 3. Thurston and Naib agree that each shall have the right to use, sell, license, maintain, distribute . . . the Computer Software Products . . . .
>
> * * *
>
> 10. Thurston and Naib agree that absent an express prior agreement to the contrary neither party shall use any of the Trademarks or any confusingly similar names on or in connection with any products and/or services. Thurston

and Naib specifically agree that Naib's use of the company and trade name "FNX Ltd." and Thurston's use of the company and trade name "Financial Software Services, Inc." are not uses of names that are confusingly similar to the Trademarks, and Thurston and Naib further agree that neither party will make any use of the name adopted by the other party as set out above, or of any confusingly similar name.

See Exhibit "4".

40. Exhibit "5" is the business card of Gerald Thurston, President of Defendant Financial Software Systems.

41. Exhibit "6" is a copy of defendant's and plaintiff's advertisement in Futures and Options World, September 1992.

42. Exhibit "7" is a copy of defendant's and plaintiff's advertisement in Futures and Options World, October 1992.

43. Dr. Barakat first became aware that Gerald Thurston was operating his company Financial Software Systems, Inc. in late 1992 or early 1993; Dr. Barakat saw an advertisement in "Futures and Options World."

44. At that time, Dr. Barakat did not send a letter or otherwise communicate with Mr. Thurston or his company telling them to stop and desist from using plaintiff's marks.

45. At that time, Dr. Barakat did not seek a legal opinion concerning whether or not he had any legal recourse against defendant.

46. Dr. Barakat states that there were four reasons why he did not take steps in late 1992 or early 1993 to do something about possible trademark infringement. First, he states, "I don't like lawyers . . . I run a small company, I try not to hire lawyers." Second, he felt that defendant "looked like they had a lot more resources than I had." Third, Dr. Barakat thought that if he raised an objection, "I feared most that they would come and object to me using the name FSS and Financial Systems Software. The idea of keeping my head low and hope nobody

bashes it was . . . what I had most in mind." Fourth, he did not wish to start up a legal case because his father was ill with cancer.

47. Dr. Barakat never picked up the telephone to call Defendant to discuss his objections to defendant's use of "FSS" with its principal, Gerald Thurston.

48. Exhibit "8" is a copy of an advertisement which appeared in Futures and Options World, August 1993, for plaintiff and defendant.

49. Exhibit "9" is a copy of an advertisement which appeared in Futures and Options World, July 1993, for plaintiff and defendant.

50. Exhibit "10" is a copy of defendant's and plaintiff's advertisement in Futures and Options World, August 1993.

51. Dr. Barakat first applied for trademark protection in the United Kingdom in November 1993.

52. Attached hereto is Exhibit "11", which is a copy of the trademark application filed in the United Kingdom on November 30, 1993.

53. The applicant for this trademark application was Financial Systems Software (UK) Limited.

54. In this application, plaintiff sought to register the mark "FSS"; he did not attempt to register the term "Financial Systems Software."

55. In mid-1989, Dr. Barakat had purchased another company named Simka Limited. He did nothing with that company until July 4, 1994, when the name of Simka Limited was changed to "Financial Systems Software (FSS) Limited."

56. Financial Systems Software (FSS) Limited began trading in July 1994.

57. It was Dr. Barakat's intent that Financial Systems Software (UK) Limited would act as the background developer of

a software product line; the second company, Financial Systems Software (FSS) Limited, would sell the products to the end user.

58. Dr. Barakat ran both companies.

59. Dr. Barakat was the Managing Director of both companies—Financial Systems Software (UK) Limited and Financial Systems Software (FSS) Limited.

60. In April 1994, Farid Naib contacted Dr. Barakat and said he would like to discuss collaboration between Farid's company, FNX Limited, and Dr. Barakat's companies.

61. On August 17, 1994, Dr. Barakat faxed to Defendant Financial Software Systems a letter, attached hereto as Exhibit "12".

62. This letter provided in part as follows:

> It has very recently come to my attention that your name, as well as the use of the "FSS" mark, is causing considerable confusion amongst our clientele (both present and prospective) . . . I must therefore ask you to immediately stop using "FSS" as a trade and service mark, as well as to change your name to something less similiar to our own. We reserve the right to pursue this matter further, including claiming for potential trademark infringement and passing off.
>
> See Exhibit "12".

63. At the time Dr. Barakat sent that letter, he was aware that defendant was using its company name and FSS logo for a year and a half to two years.

64. Dr. Barakat believed that if he had wanted to start a trademark infringement action, he and his companies could have done it in August 1994.

65. In August 1994, Dr. Barakat believed that Farid Naib and Gerald Thurston "did not like each other."

66. In August 1994, Dr. Barakat was aware that Gerald Thurston's company was a competitor with Farid Naib's company.

67. Dr. Barakat's negotiations with Farid Naib began in early August 1994.

68. Dr. Barakat was negotiating with FNX for the sale of plaintiff's trademarks as of August 1994. He had some concern as to what the attitudes of Financial Software Systems would be with regard to plaintiff's rights — "whether they'd just ignore us, say no, or be reasonable."

69. On or about October 31, 1994, Dr. Barakat executed a "Consent of Shareholders and Board of Financial Systems Software (FSS) Limited." This is attached as Exhibit "13".

70. This document provided in part as follows:

> WHEREAS, Company desires to sell FNX Limited all of its rights in and to the software and to certain assets utilized in the Business,
>
> We ratify and authorise [sic] the Board's decision to grant explicit authority to the Managing Director (being Dr. Mamdouh Barakat) to sign any contract which he deems reasonable, on behalf of the company, with FNX Limited.
>
> See Exhibit "13".

71. On or about October 8, 1994, Dr. Barakat entered into a contract entitled "Bill of Sale and Assignment". This is attached as Exhibit "14".

72. This document provides in part as follows:

> . . . Mamdouh Barakat (the "Transferor"), for and in consideration of the sum of One pound (U.K.) (1.00), HEREBY DOES GRANT, BARGAIN, SELL, TRANSFER, SET OVER and DELIVER unto Financial Systems Software (UK) Limited . . . all of the Transferor's his right, title and interest in and to:
>
> > all the intellectual property rights and source code of the Universal Financial Markets range of software owned by Transferor.
>
> See Exhibit "14".

73. It was Dr. Barakat's intent by this document to transfer all of his rights to Financial Systems Software (UK) Limited.

74. On or about October 31, 1994, Dr. Barakat, as Secretary to Financial Systems Software (UK) Limited, signed a "Consent of Shareholders and Board of Financial Systems Software (UK) Limited" which provided:

> We ratify and authorise [sic] the Board's decision to enter into the attached Bill of Sale (dated 9 October 1994) with Financial Systems Software (FSS) Limited.

This is attached as Exhibit "15".

75. It was Dr. Barakat's intent with this document to make sure that all of the rights passing from Financial Systems Software (UK) to Financial Systems Software (FSS) were done with full authority of the Shareholders and Board of Directors.

76. On or about October 9, 1994, on behalf of Financial Systems Software (UK) Limited, Dr. Barakat executed a "Bill of Sale and Assignment" which provided in part:

> ... KNOW ALL MEN BY THESE PRESENTS, that Financial Systems Software (UK) Limited ... (the "Transferor") for and in consideration of the sum of Eight Thousand Pounds (U.K.) (8,000 pounds), plus VAT in the amount of One Thousand Four Hundred Pounds (U.K.) (1,400 pounds), the receipt of which is hereby acknowledged, HEREBY GRANT, BARGAIN, SELL, TRANSFER, SET OVER and DELIVER unto Financial Systems Software (FSS) Limited ... (the "Transferee") all of the Transferor's right, title and interest in and to:
>
> > all the intellectual property rights, including trademarks and source code, of the Universal Financial Markets range of software owned by the Transferor.
> >
> > the name "Financial Systems Software" and "FSS" as well as any and all derivations thereof ... .

> The Transferor hereby represents and warrants that it is the sole owner of and has good and marketable title to the assets specified herein above . . . .
>
> This is attached as Exhibit "16".

77. By this document, Dr. Barakat transferred all rights from Financial Systems Software (UK) to Financial Systems Software (FSS) Limited.

78. Exhibit "16" does not retain ownership rights of the FSS mark for Financial Systems Software (UK).

79. On or about October 9, 1994, Financial Systems Software (UK) Limited issued an Invoice and License to Financial Systems Software (FSS) Limited for "invoice and license of," in part,

> (b) All intellectual property rights (IPR) which it owns, including trademarks, of the Universal Financial Markets range of software (as listed on the August 1994 price list). The seller would agree not to use the name "FSS" or "Financial Systems Software" to sell any service or product in the financial markets or software industry.
>
> This is attached as Exhibit "17".

80. It was Dr. Barakat's understanding that, under Exhibit "17", the rights to use the FSS mark was transferred to Financial Systems Software (FSS) Limited.

81. According to Dr. Barakat, the purpose of Exhibits "16" and "17" was to pass ownership of the intellectual property rights from Financial Systems Software (UK) to Financial Systems Software (FSS), so the latter company could sell the intellectual property to FNX Limited.

82. On or about November 2, 1994, Financial Systems Software (FSS) Limited and FNX Limited entered into an "Asset Purchase Agreement" attached hereto as Exhibit "18".

83. It was Dr. Barakat's understanding that this document constituted a sale of assets by Financial Systems Software (FSS) to FNX Limited.

84. Under the Asset Purchase Agreement, the assets transferred from Financial Systems Software (FSS) to FNX Limited included those assets listed on "Schedule 2" of the agreement, including all registered and unregistered trademarks, service marks and trade names and all associated goodwill; all other trademark rights; and all rights to use the name "FSS", "FSS (UK)", "Financial Systems Software" or any derivation and/or combination thereof; together with all rights to use all of the foregoing forever and all other rights in, to, and under the foregoing in all countries. See Exhibit "18".

85. At the time of this agreement, Financial Systems Software (FSS) owned all the rights to the assets shown on Schedule 2 of the Asset Purchase Agreement.

86. According to Dr. Barakat, the intention behind the Asset Purchase Agreement was to transfer the rights to use the name "Financial Systems Software" as well as the right to use the alleged "FSS" mark to FNX Limited.

87. By virtue of the Asset Purchase Agreement, Financial Systems Software (FSS) and Financial Systems Software (UK) agreed never to use the name "FSS" and "Financial Systems Software" in the financial services area.

88. It was Dr. Barakat's intention in signing the Asset Purchase Agreement to completely give up the right of Financial Systems Software (FSS) to use the alleged FSS and Financial Systems Software marks.

89. After the Asset Purchase Agreement of November 2, 1994, Financial Systems Software marketed its products under the name "Financial Systems Software—a division of FNX Limited." See Exhibit "19".

90. Dr. Barakat was aware that after FNX purchased the assets of FSS (UK), FNX would be marketing some of what Barakat's company had produced, utilizing the name "Financial Systems Software."

91. Exhibit "20" is an example of the logo utilized by "Financial Systems Software—a division of FNX Limited."

92. On or about November 2, 1994, FNX Limited and Dr. Barakat entered into an "Employment Agreement". This is attached as Exhibit "21".

93. After the sale of assets to FNX, Dr. Barakat's position was Senior Managing Director of FNX.

94. At that time, Farid Naib was the President and CEO of the company.

95. The advertisements, attached hereto as Exhibits "22", "23", and "24", correctly describe the Financial Systems Software product during the time the company's assets were owned by FNX Limited.

96. Exhibit "25" is a Press Release released by FNX Limited in November 1994 announcing the acquisition of plantiff's assets and business by FNX.

97. On January 31, 1995, FNX Limited filed a U.S. trademark application, a true and correct copy of which is attached as Exhibit "26".

98. On July 25, 1995, FNX Limited filed an Application to Register a Trademark with the British Patent Office. A copy of this application is attached as Exhibit "27".

99. FNX's British Patent Application sought to register the mark "FSS"; it did not seek to register the mark "Financial Systems Software".

100. On or about May 2, 1996, Dr. Barakat and Farid Naib entered into a "Settlement Agreement of Employment Contract" and "Settlement Agreement of Asset Purchase Agreement", a copy of which is attached hereto as Exhibit "28".

101. On or about May 2, 1996, FNX Limited, FNX (UK) Limited, Financial Systems Software (UK) Limited, Dr. Barakat, and Financial Systems Software (FSS) Limited entered into a "Settlement Agreement of Asset Purchase Agreement", which is attached hereto as Exhibit "29".

102. On May 29, 1996, FNX Limited executed an "Assignment", attached hereto as Exhibit "30", which provides in part:

> . . . FNX Limited hereby assigns to Financial Systems Software (UK) Limited all right, title and interest in the United States in and to said trademark and said application [Serial Number 74/627,707] therefore, together with the goodwill of the business symbolized by said trademark and said application to register said trademark.

103. Exhibit "31" is a copy of an advertisement that appeared in Financial Systems Outlook, Autumn 1996, for "Mamdouh Barakat Risk Management."

104. On or about June 5, 1996, an "Application to Register a Change of Proprietor" was filed with the British Patent Office. This document sought to change the proprietor of the application for trademark numbers 2028150 and 1555137 from FNX Limited to Financial Systems Software (UK) Limited. See Exhibit "32".

105. On or about September 24, 1996, defendant filed a Notice of Opposition in the United States Patent and Trademark Office to FNX Limited's Application for Trademark Number 74/627,707. A copy of this notice of opposition is attached as Exhibit "33".

106. After separating from FNX, plaintiff has never established an office in the United States.

107. Exhibit "34" is a true and correct copy of an article in Derivatives Engineering and Technology, May 13, 1996, pertaining to the break-up of Dr. Barakat from FNX Limited.

108. Dr. Barakat has developed a new logo, as reflected in an invoice dated August 14, 1996. It reads "Mamdouh Barakat Risk Management, trading name Financial Services Software (FSS) Limited." The logo also contains a half globe. This is attached as Exhibit "35".

109. Dr. Barakat and his wife designed this logo.

110. Dr. Barakat has registered the "MBRM" and Mamdouh Barakat Risk Management" trademarks.

111. Plaintiff did not file a trademark infringement action until November 18, 1996.

112. Dr. Barakat states that he did not file a lawsuit earlier, perhaps in December 1994, because he felt it would cost a huge amount of money.

113. Dr. Barakat was aware that through the years 1993, 1994, 1995, and in 1996 up until the time of this lawsuit that defendant was utilizing his company name and the FSS logo.

114. Plaintiff's product is contained either on a floppy diskette or a CD, and would be sent out to the potential customer.

115. Plaintiff's core range of products are essentially off-the-shelf items that are sent via floppy disk or CD to the purchasers.

116. Today the vast majority of the product which plaintiff sells is CDs, which are shipped out directly to customers, or downloaded on the Internet.

117. It is not necessary for plaintiff to go on-site to install these.

118. According to Dr. Barakat, plaintiff's software is relatively easy to install.

119. If a customer of the plaintiff needs assistance in installation, plaintiff's main means of helping such clients is over the telephone.

120. Prior to a sale of one of its products, Dr. Barakat does not personally go and visit most of his clients.

121. Only on relatively rare occasions does someone from plaintiff personally install plaintiff's product for a customer.

122. Almost all of plaintiff's sales of value-added spreadsheets are in the United Kingdom.

123. Dr. Barakat is unable to recollect a specific sale of a value-added spreadsheet in the United States.

124. As of August 1994, plaintiff was not selling many value-added spreadsheets.

125. Dr. Barakat is not familiar with the Reuters Conversation Dealing System.

126. As part of its software, Financial Systems Software does not allow users to capture financial transactions executed on the EBS Dealing System.

127. Financial Systems Software's (UK) minimum sales cycle is around a month.

128. Plaintiff agrees that a "financial system" may be defined as a system for finance, and is a broad term.

129. Dr. Barakat is unaware of a single instance where he or his company lost a sale because the customer purchased products/services from defendant.

IT IS SO STIPULATED:

McSHEA/TECCE, P.C.

BY /s/
Frederick A. Tecce, Esquire
Attorney for Plaintiff

POST & SCHELL, P.C.

BY /s/
Richard L. McMonigle, Jr., Esq
Attorney for Defendant

DATED: 5/4/98

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

FINANCIAL SYSTEMS SOFTWARE, (UK) LIMITED.	:	Case No. 97-3356
Plaintiff,	:	
v.	:	
FINANCIAL SOFTWARE SYSTEMS, INC.,	:	HON. NORMA L. SHAPIRO
Defendant.	:	

PLAINTIFF'S ADDITIONAL STIPULATED FACTS

1. In 1988, plaintiff began using the terms "FSS" and "FINANCIAL SYSTEMS SOFTWARE" in connection with the sales and service of financial risk software for financial management.

2. In April 1992, defendant, adopted and began using the terms "FSS" and "Financial Software Systems, Inc." in connection with the sales and service of financial risk software for financial management.

3. Plaintiff, Financial Systems Software is a UK corporation having its principle place of business at 25 Chalfont Court, 236 Baker Street, London, England.

4. Since 1988, plaintiff Financial Systems Software has been engaged in the development, manufacture, promotion, distribution and sale of computer software targeted for both amateur and professional financial markets. (Barakat Affidavit of 8 January, 1997 at ¶ 3).

5. Farid Naib testified that plaintiff was one of the first companies come out with spread sheet add-ins and that it had an extraordinary global presence regarding that product. (Farid Dep. at 140).

6. Plaintiff's software is designed for individuals or organizations wishing to trade various financial securities, including bonds, options, swaps and futures. (Barakat Dep. at 278, line 2).

7. The plaintiff has sold its software under the terms "FSS" and/or "FINANCIAL SYSTEMS SOFTWARE" since the inception of the company in 1988. (Barakat Affidavit of 8 January, 1997 at ¶ 3)(Exhibit "1").

8. Plaintiff is the owner of Application Serial No. 74/627,707 for the mark "FSS," currently pending in the United States Patent and Trademark office. This application was published for opposition on May 28, 1996.

9. In connection with its sales and distribution of its software, plaintiff has created promotional literature which uses the terms "FSS" and/or "Financial Systems Software." (Barakat Dep. at 342, line 18 through 343, line 15).

10. FSS-UK has advertised using the terms "FSS" and/or "FINANCIAL SYSTEMS SOFTWARE" throughout the United States and the world.

11. Exhibit "6" submitted in support of plaintiff's Motion For Summary Judgment is a collection of some of plaintiff Financial Systems Software's advertisements.

12. Plaintiff has placed many advertisements in numerous international publications. (Exhibit "6").

13. In June, 1992, the defendant Financial Software Systems began to use the term FSS. (July 15, 1996 Affidavit of Thurston filed in the United Kingdom at ¶ 4)(Exhibit "7").

14. There is no evidence that the defendant did any advertising in a magazine of its "FSS" mark prior to September 1992.

15. The first magazine advertisement by defendant utilizing the terms in question was in *Futures And Options World Magazine*, September 1992 issue. (Exhibit GTH4 to Thurston Affidavit of 15 July 1996)(Exhibit "8").

16. Plaintiff's advertisement also appeared in that very same September 1992 issue of *Futures And Options World Magazine* in which the defendant's first magazine advertisement appeared. (Exhibit "8").

17. In or about September 1992, Gerald Thurston saw the plaintiff's advertisement in the September 1992 *Futures And Options World Magazine*. (Thurston Deposition at 220, line 12 through 221, line 1).

18. The defendant uses its logo which consists of a diagram of a normal curve, the initals "FSS" and the company name Financial Software Systems in connection with selling financial risk systems to be used in connection with financial planning. (Thurston Affidavit of 15 July 1996 at ¶ 7)(Exhibit "10").

19. The defendant began to use the term "Financial Software Systems" in April 1992. (Thurston Affidavit of July 1996 at ¶ 4)(Exhibit "11").

20. Thurston learned of the possible existence of the plaintiff on or about May 31, 1992 or June 1, 1992. (Thurston Dep. at 116, line 1).

21. Thurston learned of the possible existence of the plaintiff's through one of the defendant's "contacts" or a "colleague in the market." (Thurston Dep. At 116).

22. Following its learning of the possible existence of the plaintiff, the defendant wrote to his attorney and a computer name search was conducted. (Plaintiff's Trial Exhibit No. Px-436; Bates Nos. D112-D118)(Exhibit "13").

23. As of June 23, 1992, the defendant, Financial Software Systems had not yet chosen a permanent professional logo to be used in connection with its business. (Plaintiff's Trial Exhibit No. Px-423; Bates Nos. D13-D12)(Exhibit "14").

24. The plaintiff offers its financial services products on a global basis. (Naib Dep. at 114).

25. Both the plaintiff and the defendant sell their products to the same customers. (Naib Dep. at 120); (*See also*, Thurston Dep. at 68-70, 94, 213-214); and, (Barakat Dep. at 34-35, 172-188).

26. Between 1992 and 1997, Gerald Thurston received a phone call meant for the plaintiff's company. (Thurston Dep. at 100).

27. Between 1992 and 1997, Lee Ann Thurston received two phone calls meant for the plaintiff's company. (Thurston Dep. at 102).

28. Between 1992 and 1997, Vince Small received one phone call meant for the plaintiff's company.

29. David Beroff testified that Financial Software Systems (defendant) would occasionally receive calls from people looking for Financial Systems Software (plaintiff) maybe once in a month or once in two months. Beroff Dep. at 20 & 27.

30. The earliest document produced by the defendant showing use of just the term "FSS" is dated June 1, 1992.

31. Naib testified that as of 1992, the plaintiff's company was fairly well established and had quite a few clients. (Naib Dep. at 132).

32. Farid Naib testified that the plaintiff had a substantial reputation in its market and its reputation was universally good. (Naib Dep. at 135-136).

33. Plaintiff advertised in the Financial Times, including June 27, 1990, August 31, 1990 and weekly advertisements between September 28, 1991 and January 1997. (Exhibit "6").

34. The initials "FSS" were used to refer to the plaintiff in the 1991/1992 Mitsubishi Finance Risk Directory, published by the trade journal *RISK* Magazine which was published prior to the defendant's selection of its name. (Plaintiff's Trial Exhibits Px-219, P982-P987).

35. The 1990/1991 Mitsubishi Finance Risk Directory, published by *RISK* Magazine, indicates as to the plaintiff's

software: "[I]nterface to other systems: LOTUS, EXCEL, DBASE, SQL SERVER, ORACLE and DOS applications." (Plaintiff's Trial Exhibit No. Px-179, P753).

36. The plaintiff is referred to as "FSS" in *Derivatives Engineering & Technology* articles dated September 5, 1994 and November 24, 1994. (Plaintiff's Trial Exhibit Px372, P1409-P1414).

37. The plaintiff is referred to as "FSS" in *Manage Derivatives (MD) Magazine*, October 1994 article. (Plaintiff's Trial Exhibit Px-373, P1415-P1416).

38. Gerald Thurston does not believe that the term "Financial Software Systems" is generic. (Deposition of Gerald Thurston at 202).

39. The defendant did not respond to plaintiff's August 17, 1994 and May 27, 1996 letters until defendant forwarded a June 13, 1996 letter by its attorneys/agents in the United Kingdom to the plaintiff's solicitor. (Plaintiff's Trial Exhibit No. Px-105).

40. The defendant has not initiated any legal action against Farid Naib or FNX, Inc.

41. Plaintiff's first brochure/newsletter dated December 1998 offers Portfolio Management Systems, Middle Office Systems and FX Accounting Systems. (Plaintiff's Trial Exhibit Px-394.)

42. In or about May-June 1992, Gerald Thurston was aware of trade journals, looked at them from time to time but did not read them as a matter of course. (Deposition of Gerald Thurston at 74-75).

43. In the 1994 IT Directory from *Futures And Options World*, a listing for both the plaintiff and the defendant appear on the exact same page. (Plaintiff's Trial Exhibit Px-366 (P1379-P1389)).

44. In the 1994 IT Directory from *Futures And Options World*, both the plaintiff and the defendant appear on the exact same page which indicates that the defendant's portfolio

management systems cost $20,000 upwards and back office systems cost $15,000 upwards. (Plaintiff's Trial Exhibit Px-366 at P1382).

45. In December 1988, plaintiff advertised as available general products: FX Accounting Systems, Middle Office Systems, Option Pricing Systems, Portfolio Management Systems as well as consultancy for Front/Back Office Integration. (Plaintiff's Trial Exhibit Px-394 at P1483).

46. The Sept.-Oct. 1994 *Treasury & Risk Management* "Guide to Derivative Software" states that the defendant offers front, middle and back-office systems. It further states that one time site license fees cost in the range between $15,000 and $150,000. (Plaintiff's Trial Exhibit Px-411 at 1582).

Respectfully Submitted,

/s/

Richard L. McMonigle, Esquire
Post & Schell, P.C.
Nineteenth Floor
1800 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103

Attorney for Defendant
Financial Software Systems, Inc.

/s/

Frederick A. Tecce, Esquire
McShea\Tecce, P.C.
The Mellon Bank Center
1735 Market Street
Philadelphia, Pennsylvania 19103

Attorney for Plaintiff
Financial System Software (UK) Limited

DATED: 17 December 1998

TRADE MARKS ACT 1994

IN THE MATTER of Application
No. 2,028,150 to register the mark
FSS in Clauses 9 and 36 in the name of
Financial Systems Software (UK) Limited

and

IN THE MATTER of Opposition
No. 44658 thereto by
Financial Software Systems Inc.

AFFIDAVIT OF DR. MAMDOUH BARAKAT

I, Dr. Mamdouh Barakat of 25 Chalfont Court, 236 Baker Street, London, NW1 5RS, United Kingdom, make oath and say as follows:

1. I am the Managing Director of Financial Systems Software (UK) Limited (hereinafter referred to as "the Applicants"), whose registered office is at 25 Chalfont Court, 236 Baker Street, London, NW1 5RS, United Kingdom, which position I have held since December 1988. I am fully acquainted with the nature and extent of their business in respect of the goods they manufacture and deal in and the services they provide. The statements made in this Affidavit are from my personal knowledge, or are derived from the Applicants records to which I have full access. I am fully competent and authorized to make this Affidavit on behalf of the Applicants.

2. The Applicants are a private limited company incorporated under the Companies Act 1985 in England and Wales. In December 1988, the Applicants began trading as "Financial Systems Software". There is produced and shown to me marked Exhibit "DMB1" copies of the certificates from Companies House showing "Financial Systems Software (UK) Limited" as the company's full name.

3. The Trade Mark FSS (hereinafter referred to as "the said Trade Mark") and company name "Financial Systems Software" (an unregistered Trade Mark of the Applicants)

has been used by the Applicants in Great Britain and Northern Ireland since December 1988, and since 1989 in probably every financial centre World-wide, in relation to:

(a) Personal computers and computer software for use in the field of financial services which are all included class 9.

(b) Consultancy in the field of financial services and risk management consultancy which are all included in class 36.

(c) Computer programming services; advisory and consulting services all relating to computer programming which are all included in class 42.

4. The approximate annual turnover of the goods and services sold by the Applicants, or their licensees, under the said Trade Mark World-wide between December 1988 and 9 November 1994 is as follows:

Year	Approximate Annual Turnover (Sterling GBP)	Approximate Number of Sales	Approximate Percentage in Great Britain and N. Ireland
Dec 88 to end 1989	87,615	43	86%
1990	98,045	146	75%
1991	123,010	293	53%
1992	216,538	396	42%
1993	228,169	403	54%
1 Jan 1994 to 9 Nov 1994	301,788	411	37%

14 Nov 94: invoice to FNX Limited:-£250,000

Each sale refers to an individual invoice and can include multiple products, or even a site license of the Applicants' software. Therefore, one sale could refer to over 100 units of the Applicants products bearing the said Trade Mark. There is produced and shown to me in a bundle marked Exhibit "DMB2" a client list, a list of invoices issued, a copy of the standard terms together with a full copy of some of these invoices, all belonging to the Applicants or their licensees in relation to goods and services sold under the said Trade Mark.

The standard terms have always been printed on the back of every invoice.

The Applicants' unregistered Trade Mark "Financial Systems Software" was also shown on all the above sales invoices, letterheads and products.

5. The said Trade Mark and the Applicants' unregistered Trade Mark "Financial Systems Software" have been extensively advertised in Great Britain, Northern Ireland and World-wide by way of advertisements placed in newspapers and magazines including, inter alia, Futures & Options World, Lotus Magazine, Risk Magazine and International Financing Review (IFR). There is produced and shown to me marked Exhibit "DMB3" a summary of these advertisements, and a copy of some of these advertising material showing use of the said Trade Mark and the Applicants' unregistered Trade Mark "Financial Systems Software".

6. Goods bearing the said Trade Mark, and the Applicants' unregistered Trade Mark, "Financial Systems Software", have been advertised in the following principal towns and cities of Great Britain and Northern Ireland:

ENGLAND

Barnstaple	Birmingham	Brighton
Bristol	Cambridge	Canterbury
Carlisle	Colchester	Doncaster
Dorchester	Dover	Exeter
Gloucester	Guildford	Hereford
Leeds	Lincoln	Liverpool
London	Maidstone	Manchester
Newcastle-upon-Tyne	Northampton	Norwich
Nottingham	Oxford	Preston
Plymouth	Salisbury	Sheffield
Shrewsbury	Southampton	Stoke-on-Trent
Taunton	York	

SCOTLAND

Aberdeen	Edinburgh
Glasgow	Inverness

WALES

Aberystwyth	Carmarthen	Cardiff
Swansea		

7. The Applicants' operation can be described as that of mathematicians offering consultancy services and writing computer software to assist the international banks to price, trade, monitor and manage the risk (i.e. risk management) of their securities positions in international markets (including Foreign Exchange, Bonds, Commodities, Equities, Swaps etc.). The Applicants' strategy to penetrate the market with their products was to concentrate on the international mass market, that is to keep prices low in order to sell a large quantity, mostly by mail order. They did this in the knowledge that there existed other companies selling inferior software which performs the same or similar tasks as the Applicants' software, but these other companies were charging over 10 times the prices the Applicants were charging.

An analogy can be drawn between the Applicants' company strategy and the strategy of the software company "Microsoft" which was producing and selling the inexpensive word processing software, "Microsoft Word", while some of Microsoft's competitors were selling dedicated word processors (e.g. Wang or WordPerfect). These competitors claimed their offerings to be more specialised that Microsoft and therefore priced their products considerably higher than Microsoft Word. However, in reality, Microsoft came to dominate the word processing sector. Microsoft have also successfully followed the same business strategy in many different sectors of the software market, e.g. Microsoft Excel now dominates in the spreadsheet sector.

There is produced and shown to me marked Exhibit "DMB4" an article published by Risk Magazine in November 1989 which contains a good overview of the top

50 option pricing software in the World, including that of the Applicants which appears on page 61. Also contained is a copy from the February 1992 issue of Risk Magazine which had a listing of "forthcoming enhancements and new products" from almost every risk management software provider, including that of the Applicants which appears on page 42.

8. The Applicants achieved a very high reputation as ground breakers in terms of price, performance, functionality, accuracy, as well as providing excellent support. There is produced and shown to me marked Exhibit "DMB5" and "DMB6" some articles (including directory listings) written about the Applicants, which clearly demonstrate the international reputation of the Applicants and their products, and the association of the said Trade Mark to the Applicants. This includes an article in Derivatives Strategy (February 1996), which includes the Applicants' software sold under the said Trade Mark as one of the "Seven Top Add-in Programs" in the World but in which the Opponents are not mentioned at all. There is also included an article in the leading risk management journal, Risk Magazine, February 1996 issue, which states "The current dearth of equity derivatives software suppliers means that certain products have become de facto standards. For example, the FSS and Monis Models are widely used for pricing.", where FSS refers to the Applicants.

9. The Applicants' long term strategy after penetrating the markets was to increase the functionality and offer "larger" system capabilities, where the profit margins are a lot higher, utilising the considerable goodwill generated from the large established client base. The time horizon for the Applicants to achieve this was likely to be a number of years. There is produced and shown to me marked Exhibit "DMB7" details of the Applicants' FSS Universal Trading System, written in August 1989 showing the stages they planned to implement and the anticipated growth of their products. The product overview, containing the stages, was circulated to a number of London Banks to

attract them to the product. The Applicants successfully sold a number of these trading systems in London.

10. As part of this strategy, and to avoid complicating the installation process, the Applicants deliberately did not include a complicated copy protection into the software, and the Applicants sent trial copies of the Applicants' software to many banks (one of the Applicants' first mailshots, around March 1989, was to send a free trial copy of the Applicants' Universal Yield Calculator to over 100 different UK banks). Therefore, I believe that a considerable amount of illegal copying pirating and usage of the Applicants' software took place and that, World-wide, the actual number of users of the Applicants' software is at least double, if not considerably more, than the number of users the Applicants licensed. The effect of this is to enhance the Applicants' long term potential profits from the considerable reputation thus built up.

11. There are similarities between the Applicants corporate strategy, as previously highlighted, and the strategy of NETSCAPE Corporation, which licensed its software for free for at least one year before it began charging for it. Netscape is now one of fastest growing companies in the World, and it is believed by some market experts to be the next MICROSOFT (i.e. its shares would be capitalised at over a billion dollars and it would have a near total monopoly over its industry). It has already given its founding shareholders huge returns. When conducting such a long term strategy, it would be patently unfair to allow another company, with a similar or identical name, to come into the market after the free trial period and offer its identical or similar services and products in competition to the original company.

There is produced and shown to me marked Exhibit "DMB8" some of the Applicants' promotional material and brochures, showing clearly the long term usage of the said Trade Mark and the company name.

There is also produced and shown to me marked Exhibit "DMB9" some of the Applicants' press releases, again

showing clearly the long term usage of the said Trade Mark and company name.

There is produced and shown to me marked Exhibit "DMB10" some of the Applicants' product manuals and computer screen printouts, again showing clearly the long term usage of the said Trade Mark and company name. The said Trade Mark has been included on the front page of the manual of every product sold/licensed since at least July 1989.

There is produced and shown to me marked Exhibit "DMB11" extracts from an early consultancy project of the Applicants at Shearson Lehman Hutton (performed in February and March 1989). The project was to analyse their Foreign Exchange (FX) Trading System and to quote for the next stage of the consultancy project, which was to re-write their Foreign Exchange trading system for five dealers on a network. The trading system requirements included trade (transaction/deal) capture, and profit and loss analysis for all entered trades.

It will be seen from all of the above documents exhibited to this Affidavit that the Applicants' are frequently referred to as simply "FSS" and/or "Financial Systems Software" and/or "Financial Systems" and/or Financial Software". In conversation, the Applicants are most frequently referred to as "FSS", especially by the financial market dealers/traders whom, by nature of their occupation, tend to be permanently busy and therefore use abbreviations wherever possible. Verbal recommendations and the spreading of the reputation of the Applicants via "word of mouth" are a very important advertising mechanism in the financial markets in which the Applicants operate and represent a considerable pool of goodwill. There is produced and shown to me marked Exhibit "DMB26" copies of receipts dating as far back as March 1989 bearing the Applicants' abbreviated name ("FSS").

12. The Applicants, through their licensee, Financial Systems Software (FSS) Ltd, exhibited at the 1996 European

Derivatives Exhibition, which took place on 13-14 June 1996 in London. There is produced and shown to me marked Exhibit "DMB12" a list of participants and an analysis of the delegates of this exhibit. The Applicants also exhibited at the Finance Information Technology 1996 Exhibition (Finance IT 96) which took place in London on 21-23 May 1996. The Opponents were not at either of these exhibitions.

13. I now turn to Direct Mailshots. The Applicants have undertaken a very substantial long term mailshot campaign, always utilising the said Trade Mark and the name "Financial Systems Software". The mailshots sent to named individuals at banks, corporations and financial institutions, included:

May 1990	Approx. 2,600 mailshot (mostly UK)
November 1990	Approx. 3,600 named individuals in UK
November 1990	Approx. 1,200 named individuals in Europe
November 1990	Approx. 1,300 named ind. outside Europe(approx. 50% USA)
June 1991	Approx. 4,000 named individuals in UK
June 1991	Approx. 2,900 named individuals in Europe
June 1991	Approx. 2,450 named ind. outside Europe(approx. 50% USA)
Oct/Nov 1991	Approx. 4,000 named individuals in UK
Oct/Nov 1991	Approx. 3,100 named individuals in Europe
Oct/Nov 1991	Approx. 2,450 named ind. outside Europe(approx. 50% USA)
February 1992	Approx. 1,000 named individuals in USA (100%)
Oct/Nov 1992	Approx. 5,500 named individuals in UK
Oct/Nov 1992	Approx. 3,900 named individuals in Europe
Oct/Nov 1992	Approx. 3,700 named ind. outside Europe(approx. 50% USA)
August 1994	Approx. 6,300 named individuals in UK

July 1994	Approx. 5,900 named individuals in Europe
July 1994	Approx. 7,500 named ind. outside Europe(approx 50% USA)
January 1995	Approx. 20,000 World-wide, including UK
July 1996	Approx. 25,000 World-wide(apprx. 30% UK)
December 1996	Approx. 29,000 World-wide (apprx. 30% UK)
January 1997	Magazine Inserts: over 46,000 World-wide (approx. 66% UK)

The above were just the major ones. There were in fact many more mailshots. The Applicants' general method was to work systematically through directories of banks World-wide and send their brochures to every bank and branch, and at every location to target multiple contracts, e.g. Head of Technology, Head of Dealing, the President, Chairman, the dealers themselves etc. Thus, bearing in mind the relatively small number of people actually employed in the risk management industry, it is unlikely that there exists an international bank which has not received the Applicants brochures. Not surprisingly, the Applicants' client list (Exhibit "DMB2") reads almost as an A-Z of banks and financial institutions.

14. As an indication of the goodwill, market penetration and sophistication of the Applicants' products and services, the Applicants sold their products and services, under the said Trade Mark, to a number of Central Banks and Government bodies, including:

(a) **Abu Dhabi Investment Authority** - ADIA (the government body of the United Arab Emirates responsible for investment of the Abu Dhabi Government's assets) on 23 September 1991, 2 June 1992, 20 July 1992, 21 July 1992 and 7 September 1993, 7 January 94 and 17 December 1996.

(b) **Arab Petroleum Investments Corporation** - API-CORP (the Saudi Arabian based body which manages some of the Arab petroleum assets) on 24 March

1992, 29 January 1993, 8 November 1993, 22 November 1993, 28 February 1994, 7 June 1996, and 25 September 1996.

(c) **Bank of England** on 30 January 1995.

(d) **Bank of Israel** on 10 November 93 and 19 September 96.

(e) **Bundesaufsichtsamt fur das Kreditwesen** (the German Government's central institute for the control of credit) on 7 Nov 1996.

(f) **Deutsche Bundesbank** (the German Central Bank, the BUNDESBANK) on 1 March 1995.

(g) **New Zealand Debt Management Office** - NZDMO (the New Zealand Government body responsible for managing that Country's debts) on 24 June 1992.

* * *

proceedings involving a dispute between the parties shall be brought in the courts located in the Commonwealth of Pennsylvania". Therefore, on this ground alone, any formal opposition outside Pennsylvania to the relevant trade applications should be rejected.

The "Agreement of ownership of computer software products and all rights thereto" appears to have been subsequently superseded by the "Agreement to liquidate and dissolve FX Systems Inc.".

62. In the premises, I respectfully ask the Registrar to dismiss this opposition and allow the application in suit to proceed to registration. I also respectfully seek an aware of costs to the Applicants' favour.

SWORN AT
25 Chalfont Court
236 Baker Street
NW1 5RS, London
This 8 day of January 1997

/s/_____ Before me /s/ _____
Dr. Mamdouh Barakat A Solicitor

PARTIAL LIST OF LICENCEES OR CLIENTS OF FSS - FINANCIAL SYSTEMS SOFTWARE (UK) LTD as at 6 NOVEMBER 1994

Aargauische Kantonalbank (Aarau)
Abbey Life Investment Services (Bournemouth)
Abbey National (London)
ABN Amro Bank (Amsterdam)
ABN Amro Bank (Dublin)
ABN Amro Securities (London)
ABR Corporate Finance (Johannesburg)
Abu Dhabi Investment Authority (Abu Dhabi)
Accent Circonflexe (Amsterdam)
ACT International (Tokyo)
Actuarius (Sydney)
Administracion De Cafteras (Buenos Aires)
J.G.W. Agnew & Co. (London)
Ahorro Corporation Financiera (Madrid)
AIB Capital Markets (Dublin)
AJG Investments (London)
Aktivbanken (Vejle)
Albertini & C. Sim (Milano)
Albingia Versicherungs (Hamburg)
Alcor Trust Company (Luxembourg)
Alex Ribanoff (London)
Al-Khodari Establishment (Al-Khobar)
Allied Provincial Securities (London)
Alm Brand Bank (Copenhagen)
Alpine Eagle Investments (London)
Aluminium, Pechiney (London)
Amtssparekassen Fyn (Odense)
Amadeus, Fiduciaire (Geneva)
Amstel Securities (Amsterdam)
Andrea Nencione Consultancy (Turin)
Anz Merchant Bank (London)
Arab Bank (Singapore)
Arab National Bank (Riyadh)
Arab Petroleum Investments Corp (Dhahran)
Arbejdernes Landsbank (Copenhagen)
Arbor (Milano)

Arthur Andersen (London)
Arthur Consulting (Tokyo)
Associates Capital Corporation (Slough)
Aussen-Und Devisenhandels-Beratungs (Munich)
BAC (Brussels)
Backbay Advisors (Boston)
BACOB Bank (Brussels)
Banca Commerciale Italiana (London)
Banca Commerciale Italiana (Milan)
Banca Del Gottardo (Lugano)
Banca Della Svizzera Italiana (London)
Banca Della Svizzera Italiana (Lugano)
Banca Della Svizzera Italiana (Zurich)
Banco Commercial Portugues (Lisbon)
Banco Espirito Santo E Com. De Lisboa (London)
Banco Frances Del Rio (Buenos Aires)
Banco Hispano Americano Benelux (Brussels)
Banco Internacional (Mexico)
Banco Inversion (Madrid)
Bank Cantrade Switzerland (Jersey)
Bank J Vontobel (Zurich)
Bank Julius Baer (Geneva)
Bank Julius Baer (New York)
Bank Julius Baer (Zurich)
Bank Mees & Hope (Amsterdam)
Bank Of America International (London)
Bank Of Finland (Helsinki)
Bank Of Ireland (Dublin)
Bank Of Israel (Jerusalem)
Bank Of New Zealand (Sydney)
Bank Of N.T. Butterfield & Son (Bermuda)
Bank Of Tokyo (Frankfurt)
Bank Rinderknecht (Zurich)
Bank Van Haften Labouchere (Amsterdam)
Bankers Trust Asset Management (Sydney)
Bankers Trust International (Frankfurt)
Bankers Trust International (London)
Banque Du Louvre (Paris)
Banque Generale Du Luxembourg (Zurich)

Banque Indosuez (New York)
Banque Internationale a Luxembourg (London)
Banque Nationale De Paris (Jersey)
Banque Scs Alliance (Geneva)
Banque Unigestion (Geneva)
Barclays Bank (London)
Barclays Bank (New York)
Barclays De Zoete Wedd (London)
Barclays De Zoete Wedd (Tokyo)
Barclays De Zoete Wedd Inv. Mgmt (London)
Barclays De Zoete Wedd Nederland (Amsterdam)
Barclays Metals (London)
Barclays Metals (New York)
Baring Brothers (London)
Baring Capital Investors (London)
Baring Securities (London)
Baring Securities (Singapore)
Baring Securities (Hong Kong)
Baring Securities (Tokyo)
BAT Cigarettenfabriken (Hamburg)
Bayerische Hypotheken-und Wechsel-Bank (Frankfurt)
Bayerische Landesbank (Frankfurt)
Bayerische Vereinsbank (Munich)
Bayerische Vereinsbank Intl (Luxembourg)
Bear Stearns International (London)
Bear Stearns International (New York)
Beta Mdr (London)
BHF-Bank (Frankfurt)
Blueprint Business Systems (Surrey)
Bluestar Investment (Hong Kong)
BMH Options Clearing (Amsterdam)
BMP Wertpapiere Und Optionen (Zurich)
BNE Swedbank (Luxembourg)
Boehringer Ingelheim Coordination Centre (Brussels)
Bond Center Amsterdam (Amsterdam)
Boomerang (Brussels)
Booz Allen & Hamilton (Paris)
Borghois & Ijdema (Amsterdam)
BP America (Cleveland)

BP Capital (Brussels)
BP Chemicals (London)
BP Finance (London)
BP Finance (New York)
BP Gas (Houston)
BP Italia (Rome)
BP Nutrition (Amsterdam)
BP Oil Uk (London)
BP Oil International (London)
BP Oil International (New York)
BP Oil International (Singapore)
BP Oil International (Tokyo)
BP Oil International (Zurich)
BP South Africa (Cape Town)
Brandeis Brokers (London)
British Telecom (London)
Buchanan Partners (London)
Burns Fry (London)
Calthorpe (London)
Canadian Imperial Bank Of Commerce (New York)
Cannon Lincoln (London)
Cantor Fitzgerald (London)
Cantor Fitzgerald (New York)
Cargill CMD (Lincoln)
Cargill BV (Amsterdam)
Cargill Financial Services (London)
Cargill Financial Services (Minneapolis)
Cargill Financial Services (Singapore)
Cargill Financial Services (Tokyo)
Cargill Grain Trading (Minneapolis)
Carimonte Banca (Modena)
Cariplo (Luxembourg)
Carlsberg (Copenhagen)
Carnegie International (London)
W.I. Carr (London)
W.I. Carr Far East (Hong Kong)
Carr Indosuez Asia (Hong Kong)
Cedar Street (London)
Charterhouse Bank (London)

Charterhouse Tilney (London)
Chase Manhattan Bank (Geneva)
Chase Manhattan Bank (London)
Chase Manhattan Bank (Milan)
Chase Manhattan Bank (New York)
Chemical Bank Futures & Options (London)
Chemical Bank (Hong Kong)
Chemical Bank (Buenos Aires)
Chris Hatton (London)
CIC (Paris)
Citibank (Amsterdam)
Citibank (Frankfurt)
Citibank (London)
Citibank (Milan)
Citibank (Paris)
Citibank (Zurich)
Citibank Global Asset Management (London)
Citicorp International (Hong Kong)
Citicorp Investment Bank (London)
Cititrust And Banking Corporation (Tokyo)
City & Intl Securities (Isle Of Man)
Clerical Medical Investment Group (London)
Cologne Reinsurance Company (Dublin)
Colonia Versicherung (Cologne)
Coenen, Smolders & Swatt (Haarlem)
Commerce Intl Merchant Bankers (Kuala Lumpur)
Concorde Asset Management (London)
Continental Bank (Chicago)
Continental Bank (London)
Continental Bank (New York)
Co-operative Bank (London)
Copenhagen Handelsbank (Copenhagen)
County Natwest Australia (Sydney)
County Natwest Securities (London)
County Natwest Securities (Zurich)
Crediop Finance (London)
Creditanstalt (London)
Creditanstalt (Vienna)
Credit Lyonnais (New York)

Credit Lyonnais Bank (Hong Kong)
Credit Lyonnais Rouse (London)
Credit Lyonnais Securities (Hong Kong)
Credit Suisse (Frankfurt)
Credit Suisse (Geneva)
Credit Suisse (Zurich)
Credit Suisse Asset Management (London)
Credit Suisse Financial Products (London)
Credit Suisse First Boston (Amsterdam)
Credit Suisse First Boston (Frankfurt)
Credit Suisse First Boston (London)
Credito Molisano (Campobassa)
Cresvale International Asset Mgmt (London)
Crosby Securities (Hong Kong)
CSR Treasury (Sydney)
Currency Derivatives (Surrey)
Currency Management Consultants (London)
Curvalue Beheer (Amsterdam)
Daimler-Benz (Stuttgart)
Daiwa Europe (London)
Daiwa Futures (Hong Kong)
Datastream (Rotterdam)
R.W. Day & Co (London)
De Veer Data Communications (Zoetermeer)
Delbruck & Co (Frankfurt)
Deloitte Touche Tohmatsu (Sydney)
Delphi Risk Management (London)
Delta Investigacion Financiera (Madrid)
Delta Management (Amsterdam)
Deminex (Essen)
Den Danske Bank (Copenhagen)
Den Norske Bank (New York)
Depfa-Bank (Wiesbaden)
Descap Securities (New York)
Deutsche Bank (Brussels)
Deutsche Bank (Frankfurt)
Deutsche Bank (London)
Deutsche Bank (Madrid)
Deutsche Bank (Tokyo)

Deutsche Bank (Vienna)
Deutsche Bank Sharps Pixley (New York)
Deutsche Bundesbank (Frankfurt)
Deutsche Girozentrale (Frankfurt)
Dewaay, Servais (Brussels)
Dewmont (Gibraltar)
DG Bank (Frankfurt)
DIB Industriebeteiligung (Grunwald)
Dow Chemical (London)
Dresdner Bank (Frankfurt)
Drexel Burnham Lambert (Worldwide)
Dreyfus Sohne & Cie (Basle)
Drw Trading (Chicago)
Dumas West (London)
Dynagest (Geneva)
Eagle Star Life Insurance (Dublin)
Eastern Electricity (Ipswich)
Eaton Vance (Boston)
Echosite (London)
Effectenbank Stroeve (Amsterdam)
Efisa (Lisbon)
Equitable House Investments (London)
Euro Brokers (London)
European Commission (Luxembourg)
European Investments Management (Rome)
Eurotrust (London)
Elf Trading (Geneva)
Encore Energy (Calgary)
Enterprise Oil (London)
Euro American Group (London)
EuroCash (Surrey)
Europtions (Amsterdam)
Eurotrust Plc (London)
Everycard (Milan)
Exco International (London)
Exprinter Banco (Buenos Aires)
Falcon Strategies (Hong Kong)
Falconwood (New York)
Fbs Capital Markets (London)

Fidelity Investments (London)
Fimat Futures (Chicago)
Fimat Futures (London)
Fimat Futures (New York)
Finacor Et Associes (Brussels)
Finance Treasury International (Dublin)
Financial Risk Management (London)
Financial Trading And Consultancy (London)
Finanshuset (New York)
Finanziaria Iccri-Bbl (Milan)
FinaTech (Hong Kong)
Finvest Portfolio Management (London)
First Continental Trading (Chicago)
First Continental Trading (London)
First National Bank of Chicago (Chicago)
First National Corporate & Investment Bank (Johannesburg)
Firstcorp Merchant Bank (Johannesburg)
FNX (Philadelphia)
Foreign & Colonial Management (London)
FP Computer (Frankfurt)
FP Consult (Paris)
France Telecom (Paris)
Fuji International Finance (London)
Futech (Sydney)
Gandon Securities (Dublin)
Gemina Europe Capital Markets (Luxembourg)
Genintra (Sur-Sierre)
Gerald (London)
Gerrard & National Inter Commodities (London)
Gesticredit (Milan)
GIE AXA Gestion des Actifs (Paris)
Girobank (London)
Glaras Finanz (Zurich)
Global Investment Advisors (London)
Globe Strat Asset Management (Boston)
Godel Aksa (Luxembourg)
Godsell, Astley & Pearce Capital Mkts (London)
G.K. Goh (Singapore)
Goldman Sachs (London)

Goodbody James Capel Stockbrokers (Dublin)
Gordian Group (New York)
Grantham Mayo Van Otterloo (Boston)
Greig, Middleton Financial Services (Glasgow)
Guinness Flight Global Asset Management (London)
Guinness Mahon & Co (London)
Halifax Building Society (Yorkshire)
Hambrecht & Quist (New York)
Hambros (London)
Hambros Australia (Sydney)
Hamburg-Mannheimer (Hamburg)
Hamburg-Mannheimer Investment Trust (Hamburg)
Harris Trust & Savings Bank (Chicago)
Harvard Management Company (Boston)
Harvard University Business School (Boston)
J.M. Harwood & Company Ltd (London)
Heidelberger Zement (Heidelberg)
Helaba Frankfurt - Hessen-Thuringen (Frankfurt)
Henderson Administration (London)
Hessische Landesbank (New York)
HFC Bank (Windsor)
Hill Samuel Bank (London)
HM Inspector Of Taxes (London)
Hoare Govett (London)
Hofman, Van Der Woude & Assoc (Hoogstraten)
Holford Commercial Ent. (Hong Kong)
Hongkong & Shanghai Banking Corp (London)
Hospital Plan Insurance Services (London)
Hugh Stables (London)
Hunziker & Associates (Rueschlikon)
Hypobank Winterthur (Winterthur)
Hydro Quebec (Quebec)
IBJ Schroder Bank & Trust (New York)
ICI Chemicals & Polymers (Cleveland)
IMG Holland (Amsterdam)
Indosuez International Capital Markets (London)
Industrial Bank Of Japan (New York)
ING Bank (Amsterdam)
ING Bank (Leiden)

ING Bank (London)
ING Bank (Luxembourg)
Inland Revenue (London)
Institute For Financial Training (Amsterdam)
Integro (London)
Intercapital Brokers (London)
Interfin Capital Markets (Milan)
International Financial Advisers (Kuwait City)
International Financial Markets Trading (London)
International Financial Markets Tr. (Hong Kong)
Inter Market Research Services (Channel Islands)
Inverlat (London)
Inverlat (Mexico)
Invesco Mim (London)
Investcorp International (London)
Investors Money Management Corp (Brussels)
Iris Netherlands
Istituto Baricario San Paolo Di Torino (London)
Istituto Bancario San Paolo Di Torino (Turin)
JJ Associates (London)
James Capel (Edinburgh)
James Capel (New York)
James Capel Derivatives (London)
James Capel Far East Futures (Hong Kong)
Javelin Securities (London)
Jci (Johannesburg)
Jefferies International (London)
John Busch (Singapore)
John Hughes Associates (Dublin)
John Prior (London)
John Rae Associates (Auckland)
Kankaku Europe (London)
Kaufhof Holding (Cologne)
KEA (Milan)
Kempen & Co (Amsterdam)
Kemper Investment Management (London)
Kent Ennis (Arizona)
Kidder, Peabody & Company (Hong Kong)
Kidder, Peabody & Company (New York)

Kidder, Peabody Securities (London)
Kleinwort Benson Capital Management (Pasadena)
Kleinwort Benson Securities (London)
Koch (Wichita)
Kredietbank (Brussels)
Kredietbank (Luxembourg)
Kyte Futures (London)
Labouchere Clearing (Amsterdam)
F. Lambert (Shoebryness)
Lambert Brothers Shipbroking (London)
Landau & Associates (New Jersey)
Landesbank Rheinland-Pfalz Girozentrale (Mainz)
Landesbank Schleswig-Holstein Giroz. (Kiel)
Lasser Marshall (New York)
Lazard Investors (London)
Leeds & Holbeck Building Society (Leeds)
Lehman Brothers (New York)
Lehman Brothers Global Asset Mgmt (London)
Lehman Brothers International (Hong Kong)
Lehman Brothers International (London)
Lehman Brothers International (Tokyo)
Leslie Rahl Associates (New York)
Leu Securities (London)
Liffe (London)
Lionhart Investments (London)
Litchfield Capital Management (London)
Lloyds Bank (London)
Lombard, Odier & Cie (Geneva)
London & Manchester Assurance (Exeter)
London & Oxford Securities (London)
London Bond Broking (London)
London Clearing House (London)
London Commodity Exchange (London)
Long Term Credit Bank Of Japan (London)
L.O.G. International Corp (Connecticut)
Lufthansa (Hamburg)
Luxembourg Stock Exchange (Luxembourg)
Manufacturers Hanover (London)
Manufacturers Hanover Asia (Hong Kong)

Marc Rich & Co (London)
Marcello Rossi (Milan)
Marcou Shipping Company (London)
Masefield (London)
Mediobanca (Milan)
MeesPierson (Amsterdam)
Mercati Finanziaria (Milan)
Merrill Lynch (London)
Midland Montagu (London)
Midland Montagu Futures (London)
Millennium Partners (New York)
Mitsubishi Bank (Frankfurt)
Mitsubishi Bank (Hong Kong)
Mitsubishi Bank (London)
Mitsubishi Bank (Zurich)
Mitsubishi Finance International (London)
Mobil Corp (Fairfax)
Mofex (Madrid)
Montedison (New York)
Monument Derivatives (London)
Morgan Grenfell (London)
Morgan Grenfell (Tokyo)
Morgan Grenfell Asia (Hong Kong)
Morgan Grenfell Asset Management (London)
Morgan Grenfell Ci (Jersey)
J.P. Morgan (Brussels)
J.P. Morgan (Frankfurt)
J.P. Morgan (Hong Kong)
J.P. Morgan (London)
J.P. Morgan (Madrid)
J.P. Morgan (Milan)
J.P. Morgan (New York)
J.P. Morgan (Paris)
J.P. Morgan (Singapore)
J.P. Morgan (Sydney)
J.P. Morgan (Tokyo)
J.P. Morgan (Zurich)
J.P. Morgan Investment Management (London)
Morgan Stanley (London)

Morgan Stanley (New York)
Morrish Brothers (London)
Mrm Securities (Frankfurt)
Multibanco Comermex (London)
Paul Murfin (London)
National Bank Of Abu Dhabi (Abu Dhabi)
Nationale-Nederlanden (Hague)
Natwest Capital Markets (Frankfurt)
Natwest Capital Markets (London)
Ncb Futures (Dublin)
Ncl Investments (London)
NDH Bank (Melrose)
Nelms Trading Company (London)
New Japan Securities Europe (London)
New Zealand Debt Management Office (Wellington)
Newton Investment Management (London)
Nippon Credit International (London)
Nmb Postbank Groep (Amsterdam)
Nomura Bank (Zurich)
Nomura International (Hong Kong)
Nomura International (London)
Norddeutsche Landesbank (Hannover)
Norinchukin International (London)
Norwich Union Life Insurance (Norwich)
NTLA(Aerdenhout)
NZI Securities Europe (London)
Oakes Fitzwilliams (London)
Object Asset Management (London)
OCA Clearing (Amsterdam)
OK Petroleum (Stockholm)
Olliff & Partners (London)
Oolders & De Jong (Amsterdam)
Options Advisory Office (Amsterdam)
Orco Bank (Curacao)
Paine Webber International (London)
Paine Webber International (New York)
Panafon (Athens)
Panmure Gordon Bankers (London)
Paribas Asset Management (London)

Paribas Capital Markets (London)
Particuliere Participatie Maatschappij (Amsterdam)
Pcs (London)
Peregrine Brokerage (Hong Kong)
Peregrine Derivatives (Hong Kong)
Peregrine Securities (London)
Peter May Associates (Meilen)
Petercam Securities (Brussels)
Philadelphia National (London)
Philippine National Bank (Manila)
Pictet International Management (London)
Pierson, Heldring & Pierson (Amsterdam)
Pierson Ics (London)
Pont Data Company (London)
Portline (Lisbon)
Potomac Capital (London)
Price Waterhouse Meyernel (Johannesburg)
Pro Capital (London)
Program Trading (Milan)
Provisional Airport Authority (Hong Kong)
Prudential-Bache Securities (London)
PTT Pension Fund (Groningen)
QT Optec (Zug)
Quorum Capital Management (London)
Rabobank Nederland (London)
Raiffeisen Zentralbank Osterreich (Vienna)
Rbc Dominion Securities Intl (London)
Refco Group (New York)
Remy Freres & Fils (Brussels)
Republic New York (London)
Reuters Client Site Systems (London)
A. Ribaroff (London)
Riyad Bank (Riyadh)
RM Ravarumaklama (Stockholm)
RMF Trading (Zug)
RMJ Securities Europe (London)
Robert Fleming & Co (London)
Rocorp & Partners (Amsterdam)
Rolfe Resources (London)

Roman Bauernfeind Verpackungswerk (Obergrunberg)
N.M. Rothschild & Sons (London)
Royal Bank Of Scotland (London)
Royal Insurance Asset Management (London)
Rpi (Moscow)
Rudolf Wolff & Co (New York)
Sakura Finance International (London)
Sai Investimenti (Turin)
Sal. Oppenheim (Frankfurt)
Salomon Brothers Asia (Hong Kong)
Salomon Brothers (London)
Salomon Brothers Asia (Tokyo)
Sangamon Trading (Chicago)
Sanwa International (London)
Sanwa Securities (New York)
Sarasin International Securities (London)
Sargent Bros. (London)
Sask Power (Saskatchewan)
Saudi American Bank (Riyadh)
Saudi Basic Industries Corporation (Riyadh)
Saudi British Bank (Riyadh)
Saudi Cairo Bank (Jeddah)
Saudi French Bank (Riyadh)
Scandinavian Bank (London)
Schroder Securities (London)
Schroder Securities (Tokyo)
Scotiamcleod (London)
Scott Pollard Associates (London)
Scudder, Stevens & Clark (London)
Securities Investment Bank (Johannesburg)
Sedgwick Group (London)
Seligmann, Harris & Co (London)
Shaw & Co. (London)
Shearson Lehman Hutton (London)
Shell Pensioenfonds Beheer (Hague)
Smeets, Verbaet & Co (Antwerp)
Smith Barney Shearson Europe (London)
Smith New Court (London)
Smith New Court (Tokyo)

Smith New Court Far East (Hong Kong)
Societe Generale (Amsterdam)
Societe Generale Alsacienne (Brussels)
Societe Generale Alsacienne (Luxembourg)
Societe Generale De Belgique (Brussels)
Societe Generale Strauss Turnbull (London)
Societe Nationale De Credit A L'indust. (Brussels)
Socimer International Corporation (New York)
Soliditas (Amsterdam)
Spectron Energy (London)
Spencer Pacific Corporation (Cupertino)
Sputz (Frankfurt)
SRB Trading (New York)
Standard Bank (London)
Standard Bank Of South Africa (Johannesburg)
Standard Chartered Bank (London)
Standard Life (Edinburgh)
State Street Bank & Trust Company (Boston)
State Street Bank & Trust Company (London)
State Street Bank & Trust Company (Tokyo)
Sterling Brokers (London)
Suez Kooijman (Amsterdam)
Sulzer Management (Winterthur)
Sumitomo Corporation (London)
Sumitomo Finance International (London)
Swiss Bank Corporation (London)
Swiss Bank Corp Inv Banking (Netherlands)
Svenska Handelsbanken (Stockholm)
Sviluppo Intermediazioni (Milan)
Swiss Volksbank (London)
Sydan & Co (Chicago)
Sydbank (Aabenraa)
Technosis (Uetersen)
Thai Farmers Bank (Bangkok)
Ti Group (Oxford)
Tilney & Co (Liverpool)
Tokai International (London)
Toyo Trust International (London)
Tradition Financial Services (Hong Kong)

Tradon Commodities (London)
Trans-Arabian Investment Bank (Manama)
Trinkaus & Burkhardt (Dusseldorf)
Tsb Bank (Birmingham)
Tullett & Tokyo International Secs (London)
Unibank (London)
Unibank (New York)
Unilever (London)
Union Plc (London)
Union Bank Of Switzerland (Basle)
Union Bank Of Switzerland (Hong Kong)
Union Bank Of Switzerland (Geneva)
Union Bank Of Switzerland (London)
Union Bank Of Switzerland (Paris)
Union Bank Of Switzerland (Singapore)
Ubs Global Equity Derivatives (London)
United Saudi Commercial Bank (Riyadh)
Veale & Associates (Cincinnati)
Vereins-Und Westbank (Hamburg)
Verenigde Spaarbank (Utrecht)
Victoria Versicherung (Dusseldorf)
Visipres (Zaandam)
Volksfuersorge Deutsche Leben (Hamburg)
Wako International (London)
S.G. Warburg Securities (Hong Kong)
S.G. Warburg Securities (London)
S.G. Warburg Securities (Paris)
S.G. Warburg Soditic (Geneva)
Wardley (Hong Kong)
Wardley James Capel (Hong Kong)
West Merchant Bank (London)
Westdeutsche Landesbank (Dusseldorf)
Westdeutsche Landesbank (Vienna)
Westfalenbank (Bochum)
Westlb Securities Pacific (Tokyo)
Westpac Banking Corporation (London)
Williams De Broe (London)
Wood Gundy (London)
Woralco (London)

WPZ Bank (London)
Yagi Euro Corporation (Tokyo)
Yamaichi International (London)
Zuger Kantonalbank (Zug)
Zurcher Kantonalbank (Zurich)

REF	DATE	CLIENT
S2501	08/02/89	SHEARSON LEHMAN HUTTON
S2502	01/03/89	DREXEL BURNHAM LAMBERT SECURITIES
S2503	01/04/89	DREXEL BURNHAM LAMBERT SECURITIES
S2504	07/04/89	BEAR STEARNS
S2505	26/04/89	BEAR STEARNS
S2506	28/04/89	DREXEL BURNHAM LAMBERT SECURITIES
S2507	30/05/89	DREXEL BURNHAM LAMBERT SECURITIES
S2508	05/06/89	DREXEL BURNHAM LAMBERT SECURITIES
S2509	12/06/89	DREXEL BURNHAM LAMBERT SECURITIES
S2510	12/06/89	DREXEL BURNHAM LAMBERT SECURITIES
S2511	15/06/89	DREXEL BURNHAM LAMBERT SECURITIES
S2517	01/07/89	DREXEL BURNHAM LAMBERT SECURITIES
S2518	01/07/89	DREXEL BURNHAM LAMBERT SECURITIES
S2519	24/07/89	SCANDINAVIAN BANK
S2520	25/07/89	FBS CAPITAL MARKETS
S2521	01/08/89	DREXEL BURNHAM LAMBERT SECURITIES
S2522	01/08/89	DREXEL BURNHAM LAMBERT SECURITIES
S2523	01/08/89	DREXEL BURNHAM LAMBERT SECURITIES
S2524	10/08/89	BEAR STEARNS
S2525	25/08/89	BANCA COMMERCIALE ITALIANA
S2526	01/09/89	DREXEL BURNHAM LAMBERT SECURITIES
S2527	01/09/89	DREXEL BURNHAM LAMBERT SECURITIES
S2528	05/09/89	DREXEL BURNHAM LAMBERT SECURITIES
S2529	21/09/89	SAUDI BASIC INDUSTRIES CORPORATION
S2530	01/09/89	COPENHAGEN HANDELSBANK
S2531	04/09/89	BEAR STEARNS
S2532	13/09/89	LUXEMBOURG STOCK EXCHANGE
S2533	21/09/89	SWISS VOLKSBANK
S2534	01/10/89	DREXEL BURNHAM LAMBERT SECURITIES
S2535	01/10/89	DREXEL BURNHAM LAMBERT SECURITIES
S2536	01/10/89	DREXEL BURNHAM LAMBERT SECURITIES
S2537	16/10/89	NOMURA INTERNATIONAL
S2538	16/10/89	ARTHUR ANDERSON
S2539	25/10/89	CANNON LINCOLN
S2540	01/11/89	DREXEL BURNHAM LAMBERT SECURITIES
S2541	01/11/89	DREXEL BURNHAM LAMBERT SECURITIES
S2542	16/11/89	UNION BANK OF SWITZERLAND
S2543	01/12/89	DREXEL BURNHAM LAMBERT SECURITIES
S2544	01/12/89	DREXEL BURNHAM LAMBERT SECURITIES
S2545	01/12/89	DREXEL BURNHAM LAMBERT SECURITIES
S2546	01/12/89	CITIBANK

S2547	14/12/89	MAYFLOWER
S2548	21/12/89	LOTUS USER GROUP
S2549	02/01/90	DAVID BARNEY
S2550	02/01/90	DREXEL BURNHAM LAMBERT SECURITIES
S2551	02/01/90	DREXEL BURNHAM LAMBERT SECURITIES
S2552	15/01/90	BOB MULLIGAN
S2553	15/01/90	BOB MULLIGAN
S2554	01/02/90	DREXEL BURNHAM LAMBERT SECURITIES
S2555	01/02/90	DREXEL BURNHAM LAMBERT SECURITIES
S2556	30/01/90	HOARE GOVETT
S2557	31/01/90	BRETT CLANCY
S2558	15/02/90	ALAN TAPPIN
S2559	16/02/90	NORINCHUKIN INTERNATIONAL
S2560	16/02/90	DREXEL BURNHAM LAMBERT SECURITIES
S2561	16/02/90	DREXEL BURNHAM LAMBERT SECURITIES
S2562	19/02/90	INTERNATIONAL FINANCIAL MARKETS TRADING
S2563	20/02/90	DREXEL BURNHAM LAMBERT SECURITIES
S2564	20/02/90	DREXEL BURNHAM LAMBERT SECURITIES
S2565	26/02/90	MAYFLOWER
S2566	27/02/90	TOYO TRUST INTERNATIONAL
S2567	27/02/90	CITIBANK, NETHERLANDS
S2568	16/03/90	CITIBANK, LONDON
S2569	15/03/90	CASH SALE
S2570	19/03/90	BEAR STEARNS
S2571	12/03/90	PARIBAS CAPITAL MARKETS
S2572	31/03/90	CITIBANK LONDON
S2573	31/03/90	TOYO TRUST INTERNATIONAL
S2S74	30/03/90	NICKY BULLOCK
S2575	30/03/90	GERALDINE WHITAKER
S2576	30/03/90	GOLDMAN SACHS
S2577	03/04/90	ADAM KNIGHT
S2578	04/04/90	SALOMON BROTHERS
S2579	06/04/90	SOCIETE GENERALE ALSACIENNE
S2580	13/04/90	TOYO TRUST INTERNATIONAL
S2581	13/04/90	CITIBANK, LDN
S2582	20/04/90	BEAR STEARNS
S2583	20/04/90	ABBEY NATIONAL
S2584	23/04/90	DUNCAN MCWILLIAM
S2585	05/05/90	TOYO TRUST INTERNATIONAL
S2586	08/05/90	DUMAS WEST
S2588	11/05/90	TOKA! - MARTIN

S2589	15/05/90	NORINCHUKIN INTERNATIONAL
S2590	15/05/90	HOARE GOVETT
S2591	14/05/90	MITSUBISHI FINANCE INTL
S2592	15/05/90	MAYFLOWER
S2593	23/05/90	KEMPER
S2594	06/06/90	WAKO INTERNATIONAL
S2595	07/06/90	SOCIETE GENERALE DE BELGIQUE
S2596	11/06/90	ABBEY NATIONAL
S2597	18/06/90	CITICORP
S2598	21/06/90	WAKO INTERNATIONAL
S2599	21/06/90	PRU-BACHE
S2600	22/06/90	KEMPER
S2601	25/06/90	NATWEST CAPITAL MARKETS
S2602	28/06/90	DAIWA EUROPE
S2603	28/06/90	CITICORP
S2604	29/06/90	SUMITOMO FINANCE
S2605	03/07/90	INDOSUEZ
S2606	03/07/90	GLOBE STRAT
S2607	05/07/90	WAKO INTERNATIONAL
S2608	06/07/90	SOCIETE GENERALE ALSACIENNE
S2609	11/07/90	BEAR STEARNS
S2610	12/07/90	CREDIT LYONNAIS
S2611	12/07/90	UNIBANK
S2612	13/07/90	PARIBAS
S2513	16/07/90	VONTOBEL
S2614	20/07/90	NZI SECURITIES EUROPE
S2615	23/07/90	MIDLAND MONTAGU
S2616	23/07/90	ALM BRAND
S2617	27/07/90	CITICORP
S2618	27/07/90	WAKO INTERNATIONAL
S2619	27/07/90	BEAR STEARNS
S2620	27/07/89	BANCA COMMERCIALE ITALIANA
S2621	30/07/90	ABBEY NATIONAL
S2522	31/07/90	BP OIL INTERNATIONAL
S2623	01/08/90	PJL SURVEYS
S2624	07/08/90	NATWEST CAPITAL MARKETS
S2625	01/09/90	M. LANDAU
S2626	10/08/90	KEMPER
S2527	10/08/90	TOYO TRUST INTERNATIONAL
S2628	15/08/90	SCANDINAVIAN BANK
S2629	17/08/90	SCUDDER, STEVENS & CLARK
S2630	16/08/90	S.G. WARBURGS

S2631	23/08/90	BANK JULIUS BAER
S2632	28/08/90	BERSEC
S2633	28/08/90	HOKKAIDO
S2634	30/08/90	MITSUBISHI
S2635	03/09/90	BSI LUGANO
S2636	07/09/90	MORRISH
S2637	10/09/90	TOYO TRUST INTERNATIONAL
S2638	10/09/90	CITICORP
S2639	10/09/90	PRU-BACHE
S2640	10/09/90	CURR MANG CON
S2641	13/09/90	INTERCAPITAL
S2642	13/09/90	MITSUBISHI
S2643	18/09/90	GNI
S2644	19/09/90	CITICORP
S2645	29/09/90	TOYO TRUST INTERNATIONAL
S2646	29/09/90	BEAR STEARNS
S2647	02/10/90	M. LANDAU
S2648	02/10/90	HONGKONG & SHANGHAI BANKING CORP
S2649	08/10/90	SWISS VOLK
S2650	09/10/90	INDUSTRIEKREDITBANK
S2651	09/10/90	DBCM
S2652	11/10/90	CITICORP
S2653	11/10/90	BSI LUGANO
S2654	11/10/90	BSI BLEICH.
S2655	11/10/90	BSI NUSCHE.
S2656	11/10/90	DAIWA
S2657	11/10/90	BANKERS TRUST
S2658	12/10/90	RVS
S2659	15/10/90	CONTINENTAL
S2660	15/10/90	BESL
S2661	19/10/90	NZI SECURITIES EUROPE
S2662	25/10/90	MIDL MONTAGU
S2663	30/10/90	CITICORP IB
S2664	01/11/90	BP FINANCE
S2665	01/11/90	LONG TERM CREDIT BANK OF JAPAN - LTCB
S2666	05/11/90	RSI
S2667	09/11/90	B. DEL GOTTARDO
S2668	09/11/90	NOMURA INTERNATIONAL
S2669	16/11/90	DEUTSCHE BANK
S2670	19/11/90	CITICORP
S2671	19/11/90	TOYO TRUST INTERNATIONAL
S2672	23/11/90	YAMAICHI INTERNATIONAL

S2673	23/11/90	GOODBODY JAMES CAPEL STOCKBROKERS
S2674	26/11/90	SCOTIAMCLEOD
S2675	29/11/90	SHELL PENSIOENFONDS BEHEER
S2676	30/11/90	SASKPOWER
S2677	30/11/90	NMB POSTBANK GROEP
S2678	30/11/90	BAYER VEREINS
S2679	03/12/90	ALM BRAND
S2680	05/12/90	PCS
S2681	05/12/90	COLONIA VERSICHERUNG
S2682	07/12/90	QT OPTEC
S2683	07/12/90	GOLD HILL
S2684	11/12/90	GOTTARDO BK
S2685	12/12/90	BANK MEES & HOPE
S2686	12/12/90	VER WESTBNK
S2687	12/12/90	CONTINENTAL BANK
S2688	12/12/90	HAMBROS
S2689	13/12/90	W.I. CARR
S2690	14/12/90	BP FINANCE
S2691	17/12/90	SCHRODERS
S2692	17/12/90	HAMBROS
S2693	20/12/90	POLLAK
S2694	27/12/90	INSTITUTE FOR FINANCIAL TRAINING
S2695	27/12/90	LONDON & MANCHESTER ASSURANCE
S2696	02/01/90	MORGAN JP
S2697	07/01/91	BP OIL TRADING
S2698	07/01/91	SOCIMER
S2699	04/01/91	UNION BANK OF SWITZERLAND
S2700	08/01/91	CHARTERHOUSE
S2701	10/01/91	CREDIOP
S2702	10/01/91	CONTINENTAL
S2703	10/01/91	SOCIETE GENERALE
S2704	10/01/91	TOYO TRUST INTERNATIONAL
S2705	15/01/91	W.I. CARR
S2706	15/01/91	DG INV BANK
S2707	16/01/91	COUNTY NATWEST
S2708	10/02/91	SALOMON BROTHERS
S2709	18/01/91	KLEINWORT
S2710	18/01/91	BANK OF AMERICA INTERNATIONAL
S2711	22/01/91	EUROPTIONS
S2712	22/01/91	NOMURA INTL
S2713	23/01/91	LAZARD BROTHERS
S2714	23/01/91	BP OIL TRADING

S2715	29/01/91	CARGILL
S2716	30/01/91	STANRD LIFE
S2717	01/02/91	EXCO
S2718	01/02/91	MORGAN GRENFELL
S2719	04/02/91	HAMBROS
S2720	04/02/91	TOYO TRUST
S2721	05/02/91	DEUTSCHE BANK
S2722	07/02/91	GIROBANK
S2723	07/02/91	NORINCHUKIN INTERNATIONAL
S2724	11/02/91	PARIBAS
S2725	11/02/91	VEREINS-UND-WESTBANK
S2726	13/02/91	HARRIS TRUST
S2727	15/02/91	NATIONALE-NEDERLANDEN
S2728	18/02/91	INTERNATIONAL FINANCIAL MARKETS TRADING
S2729	19/02/91	CITIBANK NA
S2730	19/02/91	FINANZIARIA
S2731	20/02/91	CITIBANK
S2732	22/02/91	BARING SECS
S2733	22/02/91	MITSUBISHI FINANCE INTERNATIONAL
S2734	26/02/91	INDOSUEZ
S2735	27/02/91	WARBURG SOD
S2736	27/02/91	KEMPER
S2737	27/02/91	MIKE LANDAU
S2738	28/02/91	CARGILL
S2739	28/02/91	BP FINANCE
S2740	01/03/91	WPZ
S2741	04/03/91	J.P. MORGAN
S2742	05/03/91	BEAR STEARNS
S2743	06/03/91	BP OIL TRADING
S2744	07/03/91	BANK OF NEW ZEALAND
S2745	07/03/91	MID MONTAGU
S2746	07/03/91	MABON
S2747	08/03/91	ASSOCIATES CAPITAL CORPORATION
S2748	11/03/91	BP OIL TRADING
S2749	14/03/91	EAGLE STAR
S2750	14/03/91	HAMBROS
S2751	15/03/91	NORINCHUKIN INTERNATIONAL
S2752	18/03/91	CITI - LDN
S2753	27/03/91	TOKAI
S2754	02/04/91	OCCIDENTAL
S2755	02/04/91	DAIWA

S2756	02/04/91	GOLDMANS
S2757	02/04/91	POTOMAC
S2758	02/04/91	TOYO TRUST
S2759	02/04/91	REUTERS
S2760	03/04/91	BDO
S2761	03/04/91	BP FINANCE
S2762	04/04/97	WARBURGS
S2763	05/04/91	CARGILL
S2764	08/04/91	FIDELITY
S2765	08/04/91	DELTA
S2766	09/04/91	COLONIA VERSICHERUNG
S2767	11/04/91	MIDLAND MONTAGU
S2768	12/04/91	CARGILL
S2768B	12/04/91	CARGILL USA
S2769	08/04/91	BP OIL TRADING
S2770	16/04/91	ARAB NATIONAL BANK
S2771	19/04/91	BP OIL TRADING
S2772	22/04/91	NORINCHUKIN INTERNATIONAL
S2773	24/04/91	LAMBERT BROTHERS
S2774	25/04/91	SANWA INTERNATIONAL
S2775	25/04/91	GOLDMANS
S2776	25/04/91	VERELNIGDE
S2777	26/04/91	SCHRODER ASS
S2778	30/04/91	LAZARD INV
S2779	30/04/91	MERIDIAN
S2780	02/05/91	BP FINANCE
S2781	02/05/91	CITIBANK
S2782	03/05/91	GENINTRA
S2783	07/05/91	JULIUS BAER
S2784	08/05/91	WARBURGS
S2785	08/05/91	SAL OPPENHEIM
S2786	10/05/91	BARING SECS
S2787	14/05/91	MITSUBISHI BANK
S2788	14/05/91	WATSON, DAVID
S2789	16/05/91	INTERNATIONAL FINANCIAL MARKETS TRADING
S2790	20/05/91	SEDGWICK
S2791	22/05/91	MITSUBISHI FINANCE INTERNATIONAL
S2792	23/05/91	SUMITOMO FINANCE
S2793	23/05/91	CITIBANK
S2794	24/05/91	NORDDEUTSCHE LANDESBANK (NORD/LB)
S2795	28/05/91	BANKERS TRUST

S2796	28/05/91	ROBERT FLEMING
S2797	28/05/91	DE NAT INV.
S2798	31/05/91	NORINCHUKIN INTERNATIONAL
S2799	31/05/91	WPZ
S2800	03/06/91	WARREN & SELBERT
S2801	04/06/91	INDUSTRIAL BANK OF JAPAN - IBJ
S2802	05/06/91	SAUDI AMERICAN BANK
S2803	06/06/91	BANCA DELLA SVIZZERA ITALIANA - BSI
S2804	07/06/91	CARIPLO
S2805	07/06/91	HILL SAMUEL
S2806	18/06/91	WARBURGS
S2807	18/06/91	OOLDERS
S2808	18/06/91	LEADENHALL
S2809	19/06/91	BP OIL INTERNATIONAL
S2810	20/06/91	BANCA COMMERCIALE ITALIANA
S2811	20/06/91	SMITH NEW COURT
S2812	20/06/91	BANCO HISP AM
S2313	21/06/91	JP MORGAN
S2814	25/06/91	CREDIT SUISSE FIRST BOSTON - CSFB
S2815	27/06/91	BIKUBEN
S2816	28/06/91	CITIBANK
S2817	01/07/91	TORVALD
S2818	02/07/91	COUNTY
S2819	03/07/91	BARCLAYS DE ZOETE WEDD
S2820	03/07/91	BP OIL INTERNATIONAL
S2821	04/07/91	ABBEY
S2822	04/07/91	COUNTY NATWEST
S2823	05/07/91	JAMES CAPEL FAR EAST
S2824	05/07/91	TAGUE
S2825	08/07/91	SAUDI BRITISH BANK
S2826	09/07/91	NORTH WALL STR
S2827	09/07/91	SMITH NEW COURT
S2828	10/07/91	GEMINA
S2829	11/07/91	J.P. MORGAN
S2830	11/07/91	ACCOUNTABILITY
S2831	12/07/91	SHEARSON
S2832	12/07/91	BIKUBEN
S2833	15/07/91	BANCO SANT
S2834	16/07/91	BRUNDEIS
S2835	18/07/91	WESTFALENBANK
S2836	18/07/91	HAMBROS
S2837	18/07/91	NELMS TRADING

S2838	19/07/91	HILLSDOWN
S2839	19/07/91	SUMITOMO
S2840	19/07/91	SBC
S2841	22/07/91	COUNTY NATWEST
S2842	22/07/91	J.P.M. BRUSS
S2843	23/07/91	UNION BANK OF SWITZERLAND ASSET
S2844	23/07/91	SMEETS
S2845	24/07/91	LLOYDS
S2846	26/07/91	LAZARD INV
S2847	26/07/91	LAZARD BROTH
S2848	29/07/91	DAIWA EUROPE
S2849	29/07/91	N.M. ROTH
S2850	30/07/91	CITIBANK
S2851	30/07/91	TOYO TRUST INTERNATIONAL
S2852	30/07/91	BP OIL INTERNATIONAL
S2853	30/07/91	DEUTSCHE BANK
S2854	30/07/91	FUJI
S2855	30/07/91	MUB (METZLER)
S2856	30/07/91	INDOSUEZ
S2857	05/08/91	NORINCHUKIN INTERNATIONAL
S2858	05/08/91	W.I. CARR
S2859	06/08/91	BANCA COMMERCIALE
S2860	07/08/91	CREDIT SUISSE FIRST BOSTON
S2861	07/08/91	CREDITANSTALT
S2862	07/08/91	BANCA DELLA SVIZZERA ITALIANA - BSI
S2863	08/08/91	BRITISH TELECOM
S2864	08/08/91	IMI
S2865	09/08/91	SMITH NEW COURT
S2866	12/08/91	CREDIT SUISSE FIRST BOSTON - CSFB
S2867	12/08/91	BARING SECS
S2868	13/08/91	PARIBAS
S2869	14/08/91	FUJI INTL
S2870	15/08/91	MORGAN GUAR
S2871	16/08/91	AMADEUS
S2872	19/08/91	BANK JULIUS BAER
S2873	20/08/91	ARTHUR ANDERSON
S2874	21/08/91	DE NAT INV
S2875	23/08/91	BP OIL UK
S2876	28/08/91	AD INV CO
S2877	29/08/91	VONTOBEL
S2878	02/09/91	WESTDEUTSCHE LANDESBANK - WESTLB
S2879	02/09/91	BRITISH TELECOM

S2880	04/09/91	ABBEY
S2881	04/09/91	CREDIT SUISSE FIRST BOSTON - CSFB
S2882	04/09/91	HARVARD
S2883	05/09/91	S.G. WARB GP M
S2884	05/09/91	NIBE
S2885	05/09/91	FUJI BANK
S2886	09/09/91	GNI
S2887	09/09/91	BP FINANCE
S2888	09/09/91	MIDLAND MONTAGU ftrs
S2889	09/09/91	MITSUBISHI BANK
S2890	09/09/91	IBM NETHERLAND
S2891	01/11/91	JAMES CAPEL
S2892	13/09/91	J.P. MORGAN
S2893	13/09/91	NORINCHUKIN INTERNATIONAL
S2894	17/09/91	MIDLAND MONTAGU
S2895	17/09/91	MIDLAND MONTAGU futures
S2896R	17/09/91	JAMES CAPEL
S2897	19/09/91	BEAR STEARNS
S2898	23/09/91	ABU DHABI INVESTMENT AUTHORITY - ADIA
S2899	24/09/91	J.P. MORGAN
S2900	24/09/91	FIMAT FUTURES
S2901	25/09/91	ELF TRADING
S2902	26/09/91	INTERCAPITAL
S2903	30/09/91	CITIBANK
S2904	30/09/91	TECHSYS
S2905	30/09/91	CREDIT SUISSE FIRST BOSTON - CSFB
S2906	02/10/91	BP FINANCE
S2907	04/10/91	J.J. ASSOC
S2908	08/10/91	BANC CM PORT
S2909	09/10/91	BARING SECURITIES
S2910	10/10/91	ALBINGIA VERSICHERUNGS
S2911	10/10/91	ROYAL INSURANCE
S2912	14/10/91	BEAR STEARNS
S2913	10/10/91	BARING SECURITIES
S2914	14/10/91	GOODBODY JAMES CAPEL STOCKBROKERS
S2915	15/10/91	MARC RICH
S2916	15/10/91	MARC RICH
S2917	18/10/91	GOLDMAN SACHS
S2918	14/10/91	BARING SECURITIES
S2919	25/10/91	MITSUBISHI FINANCE
S2920	28/10/91	BANKERS TRUST
S2921	29/10/91	DRESDNER BANK

S2922	30/10/91	BAYERISCHE VEREINS
S2923	17/10/91	BARING SECURITIES
S2924	30/10/91	LIFFE - LONDON INTERNATIONAL FINANCIAL FUTURES EXCHANGE
S2925	30/10/91	SHARELINK
S2926	31/10/91	CITIBANK-FRANK
S2927	31/10/91	BNE SWEDBANK
S2928	01/11/91	NMB POSTBANK
S2929R	05/11/91	ABN AMRO
S2930	05/11/91	CREDITANSTALT
S2931	06/11/91	INTERMONEY
S2932	07/11/91	RAE, JOHN
S2933	07/11/91	BARCLAYS DE ZOETE WEDD
S2934	07/11/91	CARNEGIE
S2935	07/11/91	NIPPON CREDIT INTERNATIONAL
S2936	08/11/91	PROGRAM TRADING
S2937	08/11/91	SAVRY, GERARD
S2938	11/11/91	UNION BANK OF SWITZERLAND
S2939	11/11/91	TOYO TRUST INTERNATIONAL
S2940	14/11/91	WESTDEUTSCHE LANDESBANK - WESTLB
S2940B	14/11/91	WESTDEUTSCHE LANDESBANK - WESTLB
S2941	14/11/91	BARING (JPN)
S2942	15/11/91	SVENSKA
S2943	18/11/91	CITIBANK
S2944	18/11/91	BEAR STEARNS
S2945	19/11/91	NIPPON CREDIT INTERNATIONAL
S2946	19/11/91	LEHMAN BROTHERS
S2947	19/11/91	GANDON
S2948	19/11/91	ENGELKE
S2949	20/11/91	CREDITO MOLI
S2950	21/11/91	DEUTSCHE BANK
S2951	21/11/91	ESSI
S2952	22/11/91	BNE SWEDBANK
S2953	22/11/91	ADIG INVESTMENTS
S2954	26/11/91	EAGLE STAR
S2955	27/11/91	BEAR STEARNS
S2956	27/11/91	ALLIED PROVINCIAL
S2957	28/11/91	GREIG MIDDLE
S2958	29/11/91	EBRD
S2959	02/12/91	WARBURGS FE
S2960	03/12/91	UNION BANK OF SWITZERLAND P&D
S2961R	05/12/91	DEUTSCHE BANK

S2962	05/12/91	RBC
S2963	06/12/91	BP CAPITAL
S2964	09/12/91	BARING (JPN)
S2965	09/12/91	EATON VANCE
S2966	10/12/91	FOUR SEASONS
S2967	10/12/91	S.G. WARBURGS
S2968	10/12/91	JULIUS BAER
S2969	11/12/91	INLAND REVENUE
S2970	11/12/91	UB FINLAND
S2971	16/12/91	IMM
S2972	16/12/91	GIROBANK
S2973	16/11/91	BARING BROTHERS
S2974	16/12/91	CASSA CUNEO
S2975	17/12/91	ZURCHER
S2976	18/12/91	MARCOU SHIPPING
S2977	19/12/91	FINE ART INV
S2978	19/12/91	COUNTY NATWEST
S2979	19/12/91	BP FINANCE
S2980	19/12/91	BP FINANCE
S2981	20/12/91	CITIBANK
S2982	20/12/91	BEAR STEARNS
S2983	20/12/91	TOYO TRUST INTERNATIONAL
S2984	27/12/91	WARDELY-THOMPSON
S2984B	27/12/91	FINANCIAL TRADING AND CONSULTANCY (FTC)
S2985	30/12/91	MITSUBISHI BANK
S2986	03/01/92	INVESTCORP
S2987	03/01/92	CSFP
S2988	07/01/92	WESTDEUTSCHE LANDESBANK - WESTLB
S2989	07/01/92	ABC
S2990	08/01/92	INDUSTRIAL BANK OF JAPAN
S2991	09/01/92	MANUFACTURERS HANOVER
S2992	13/01/92	THAI FARMERS
S2993	15/01/92	VISIPRES
S2994	15/01/92	J.P. MORGAN
S2995	15/01/92	CHARTERHOUSE
S2996	16/01/92	LEHMAN BROTHERS
S2997	17/01/92	EAGLE STAR
S2998	21/01/92	BP OIL INTL
S2999R	22/01/92	ADP/BANCA COMMERCIALE ITALIANA
S3000	23/01/92	NORINCHUKIN INTERNATIONAL
S3001	05/03/92	PHILADELPHIA

S3002	27/01/92	LEHMAN BROTHERS
S3003	01/02/92	J.P. MORGAN
S3004	27/01/92	SMITH NEW COURT
S3005	28/01/92	BEAR STEARNS
S3006	28/01/92	EAGLE STAR
S3007	28/01/92	S.G. WARBURG
S3008	28/01/92	UNION DISCOUNT
S3009	28/01/92	SHELL PENSI
S3010	28/01/92	EIM
S3011	29/01/92	IMI SECURITIES
S3012	31/01/92	UNION BANK OF SWITZERLAND BASLE
S3013R	03/02/92	HARRIS INF TECH
S3014	05/02/92	REPUBLIC NEW YORK
S3015	10/02/92	UNION BANK OF SWITZERLAND GENEVA
S3016	10/02/92	OAKES WILLIAM
S3017	10/02/92	BARING (JPN)
S3018	10/02/92	BARING (JPN)
S3019	11/02/92	NOMURA INTL
S3020	12/02/92	CITIBANK FK
S3021	14/02/92	SCOTIA MCLEOD
S3022	14/02/92	UNION BANK OF SWITZERLAND ZURICH
S3023	17/02/92	IST SAN PAOLO
S3024	17/02/92	S.G. WARB GP
S3025	17/02/92	STOCKMENT
S3026	18/02/92	AL-KHODARI
S3027R	18/02/92	W.I. CARR
S3028	18/02/92	DEUTSCHE BANK - AUSTRIA
S3029	19/02/92	COUNTY NATWEST
S3030	20/02/92	BANK RINDERKN
S3031	21/02/92	VEREINS-UND WES
S3032	26/02/92	FUJI CAPITAL
S3033	27/02/92	FIRST NATIONAL
S3034	27/02/92	ARBEJDERNES
S3035	28/02/92	DEUTSCHE BANK
S3036	28/02/92	S.G. WARBURG
S3037	27/02/92	BANK RINDERKN
S3038	28/02/92	BEAR STEARNS
S3039	28/02/92	EAGLE STAR
S3040	28/02/92	CITIBANK
S3041	28/02/92	BRANDEIS
S3042	02/03/92	MORRIS (BANK TRUST)
S3043	02/03/92	REPUBLIC NEW YORK

S3044	03/03/92	SCHRODER SECS
S3045	04/03/92	EURO BROKERS
S3046	05/03/92	BARCLAYS DE ZOETE WEDD NETHERLAN
S3047	06/03/92	MAN HANY HK
S3048	10/03/92	ALBINGIA VERSICHERUNGS
S3049	11/03/92	FIRST CONTINENTAL
S3050	11/03/92	CALHOPE
S3051	11/03/92	ABN AMRO SECS
S3052	12/03/92	KANKAKU
S3053	13/03/92	LEU SECURITYS
S3054	16/03/92	DREYFUS & CIE
S3055	17/03/92	BCP
S3056	17/03/92	J.P. MORGAN
S3057	17/03/92	ACT FINANCIAL
S3058	19/03/92	IMI SECS
S3059	19/03/92	CIC
S3060	19/03/92	INTERNATIONAL FINANCIAL MARKETS TRADING
S3061	23/03/92	GOLDMAN SACHS
S3062	23/03/92	BANK OF AMERICA
S3063	24/03/92	DBS SECURITIES
S3064	24/03/92	ARAB PETROLEUM INVESTMENTS CORP - APICORP
S3065	26/03/92	COMSOFT
S3066	26/03/92	HAMBROS BANK
S3067	27/03/92	AKTIVBANKEN
S3068	01/04/92	MORGAN GRENFELL
S3069	01/04/92	FUJI INTL
S3070	01/04/92	WOOD GUNDY
S3071	13/04/92	CAL FTRS
S3072	01/04/92	GREIG MIDDLE
S3073	01/04/92	J.P. MORGAN
S3074	01/04/92	S.G. WARBURG
S3075	01/04/92	EAGLE STAR
S3076	01/04/92	CITIBANK
S3077	01/04/92	FINANCIAL TRADING AND CONSULTANCY (FTC)
S3078	01/04/92	ALPINE EAGLE INV
S3079	01/04/92	M. LANDAU
S3080	01/04/92	REUTERS
S3081	03/04/92	PROGRAM TRADING
S3082	07/04/92	HENDERSON ADM

S3083	08/04/92	H.P.I.S.
S3084R	10/06/92	J.P. MORGAN (CANADA)
S3085	09/04/92	SAL OPPENHEI
S3086	09/04/92	BARCLAYS
S3087	13/04/92	BANCA DEL GOT
S3088	13/04/92	BANK OF NEW ZEALAND
S3089	13/04/92	WILLIAM CHAN
S3090	15/06/92	DEUTSCHE BANK
S3091	15/04/92	BMP WERTPAP
S3092	16/04/92	S.G. WARBURGS
S3093	21/04/92	NAT BNK ABU
S3094	23/04/92	INVESCO MIM
S3095	21/04/92	S.G. WARBURGS
S3096	23/04/92	CREDIT SUISSE FIRST BOSTON - CSFB
S3097	27/04/92	BP OIL BRS
S3098	28/04/92	GUSTAVII
S3099	28/04/92	S.G. WARBURGS
S3100	29/04/92	FINACOR
S3101	30/04/92	CITIBANK
S3102	01/05/92	BP CAPITAL
S3103	05/05/92	REMY FRERES
S3104	05/05/92	BEAR STEARNS
S3105	08/05/92	CONTINENTAL
S3106	08/05/92	IBJ SCHRODER
S3107	12/05/92	ROBERT FLEMING
S3108	13/05/92	BP INTERNAT
S3109	14/05/92	MITSUBISHI FINANCE INTERNATIONAL
S3110	14/05/92	PEREGRINE
S3111	15/05/92	COUNTY NW
S3112	18/05/92	MORRIS (BANK TRUST)
S3113	19/05/92	J.P. MORGAN (ITALY)
S3114	19/05/92	CARLSBERG
S3115	19/05/92	BANCA DEL GOTTARD
S3116R	20/05/92	JONES, GRAHAM
S3117	21/05/92	SVILUPPO
S3118	21/05/92	J.P. MORGAN (USA)
S3119	21/05/92	SANWA INTERNATIONAL
S3120	22/05/92	TELERATE
S3121	26/05/92	J.P. MORGAN (ITALY)
S3122	26/05/92	KANKAKU
S3123	27/05/92	CREDIT SUISSE FIRST BOSTON - CSFB
S3124	27/05/92	SCHRODER SECS

S3125	27/05/92	J.P. MORGAN (ZURICH)
S3126	28/05/92	MORGAN GRENFELL
S3127	29/05/92	S.G. WARBURG
S3128	29/05/92	CARGILL
S3129	02/06/92	TOKAI
S3130	02/06/92	ABU DHABI INVESTMENT AUTHORITY - ADIA
S3131	05/06/92	ABN AMRO
S3132	29/05/92	CARGILL
S3133	08/06/92	DEUTSCHE BANK
S3134	08/06/92	BP OIL INTERNATIONAL
S3135R	09/06/92	BMP WERTPAP
S3136	09/06/92	COUNTY NATWEST
S3137	10/06/92	AMST OPT TRAD
S3138	10/06/92	ELF TRADING
S3139R	11/06/92	INTERFIN CAP
S3140R	11/06/92	TI GROUP
S3141	11/06/92	EURO BROKERS
S3142	15/06/92	SWISS VOLKSBANK
S3143	16/06/92	COUNTY NATWEST
S3144	19/06/92	BP FINANCE
S3145	19/06/92	BETA MDR
S3146	23/06/92	UNION BANK OF SWITZERLAND P&D
S3147	23/06/92	FUJI CC
S3148R	24/06/92	NEW ZEALAND DEBT MANAGEMENT OFFICE (NZDMO)
S3148B	24/06/92	NEW ZEALAND DEBT MANAGEMENT OFFICE (NZDMO)
S3149	24/06/92	UNION BANK OF SWITZERLAND PHILLIPS
S3150	25/06/92	EAGLE STAR
S3151	26/06/92	S.G. WARBURGS
S3152	26/06/92	FINANCIAL TRADING AND CONSULTANCY (FTC)
S3153	26/06/92	TOYO TRUST INTERNATIONAL
S3154	26/06/92	BEAR STEARNS
S3155	26/06/92	S G. WARBURGS
S3156R	26/06/92	BARCLAYS DE ZOETE WEDD
S3157	29/06/92	WHITE, ERIC
S3158	30/06/92	STANDARD LIFE
S3159R	01/07/92	AMSTEL SECS
S3160	02/07/92	JOHN PRIOR
S3161	02/07/92	PETROFINA
S3162R	02/07/92	PICTET

S3163	03/07/92	FIRST NATIONAL CORPORATE & INVESTMENT BANK
S3164	03/07/92	SOCIETE GENERALE DE BELGIQUE
S3165	03/07/92	UNION BANK OF SWITZERLAND P&D
S3166	06/07/92	ISTITUTO BANCARIO SAN PAOLO DI TORINO
S3167	06/07/92	VOLKSFUERSORGE
S3168	07/07/92	BP OIL INTERNATIONAL
S3169	07/07/92	BRITISH GAS EXPLORATION AND PRODUCTION
S3170	07/07/92	KIDDER, PEABODY
S3171	08/07/92	W.I. CARR
S3172	09/07/92	INTERNATIONAL FINANCIAL MARKETS TRADING
S3173	10/07/92	MITSUBISHI BANK
S3174	13/07/92	CARNEGIE
S3175	13/07/92	HUNZIKER
S3176	16/07/92	J.P. MORGAN ITALY
S3177	16/07/92	UNION BANK OF SWITZERLAND P&D
S3178	16/07/92	EASTERN ELECTRICITY
S3179	16/07/92	ISTITUTO BANCARIO SAN PAOLO DI TORINO
S3180	17/07/92	VISIPRES
S3181	17/07/92	S.G. WARBURGS
S3182R	20/07/92	CO-OPERATIVE BANK
S3183	20/07/92	ABU DHABI INVESTMENT AUTHORITY - ADIA
S3184	20/07/92	SUMITOMO FINANCE
S3185	21/07/92	ABU DHABI INVESTMENT AUTHORITY - ADIA
S3186	22/07/92	ANZ MERCHANT BANK
S3187	22/07/92	REUTERS
S3188	23/07/92	PGE (AUSTRALIA)
S3189	24/07/92	CREDIT SUISSE FIRST BOSTON - CSFB
S3190	27/07/92	CONTINENTAL
S3191	29/07/92	MONUMENT DERIVAT
S3192	28/07/92	UNION BANK OF SWITZERLAND P&D
S3193	30/07/92	EAGLE STAR
S3194	30/07/92	CITIBANK
S3195	30/07/92	JULIUS BAER
S3196	30/07/92	INTERNATIONAL FINANCIAL MARKETS TRADING
S3197	04/08/92	EURO BROKERS
S3198	04/08/92	J.P. MORG LDN
S3199	04/08/92	PCS
S3200R	19/08/92	ALPINE EAGLE
S3201	05/08/92	AJG INVESTMENTS

S3202	05/08/92	UNION BANK OF SWITZERLAND P&D
S3203	06/08/92	GOLDMAN SACHS
S3204	06/08/92	JC (FE)
S3205	07/08/92	ZUGER KANTONAL
S3206R	07/08/92	J.P. MORGAN
S3207	10/08/92	WESTDEUTSCHE LANDESBANK - WESTLB
S3208	10/08/92	LONDON BOND BROKING
S3209	11/08/92	BP FINANCE
S3210	11/08/92	JAMES CAPEL
S3211	12/08/92	MITSUBISHI BANK
S3212	12/08/92	CITIBANK FNK
S3213	13/08/92	MORGAN GRENFELL
S3214	13/08/92	CALHORPE
S3215	19/08/92	DERIV INV A
S3216	17/08/92	KLEINWORT BENSONS
S3217	20/08/92	HUGHES, JOHN
S3218	20/08/92	COUNTY NATWEST
S3219	21/08/92	SGW (PARIS)
S3220	26/08/92	UNION BANK OF SWITZERLAND P&O
S3221	26/08/92	DEUT BNK FK
S3222	26/08/92	EUROBROKERS
S3223	26/08/92	EATON VANCE
S3224	27/08/92	BLUEPRINT
S3225	27/08/92	MONTEDISON
S3226	28/08/92	BANK JULIUS BA
S3227	28/08/92	CIC
S3228	28/08/92	CONTINENTAL
S3229R	11/09/92	FINANSHUSET
S3230	02/09/92	SRB TRADING
S3231	02/09/92	KAUFHOF
S3232	03/09/92	MAY, PETER
S3233	04/09/92	ARAB BANK
S3234R	07/09/92	CREDIT SUISSE FIRST BOSTON - CSFB
S3235	08/09/92	CREDIT SUISSE FIRST BOSTON - CSFB
S3236	09/09/92	KLESCH & CO
S3237	09/09/92	FINVEST
S3238	10/09/92	SMITH NEW COURT
S3239	10/09/92	BLUEPRINT
S3240	11/09/92	SAKURA
S3241	11/09/92	SEDGEWICK
S3242	14/09/92	BARCLAYS DE ZOETE WEDD
S3243	16/09/92	BARING SECS

S3244R	17/09/92	MITSUBISHI BANK
S3245	17/09/92	CARGILL
S3246	18/09/92	UNION BANK OF SWITZERLAND P&D
S3247	23/09/92	STATE STREET BANK & TRUST COMPANY
S3248	23/09/92	MONUMENT DERIV
S3249	23/09/92	BP FINANCE
S3250	23/09/92	SHEARSON LEHMAN
S3251	24/09/92	CARGILL
S3252R	24/09/92	CREDIT SUISSE FIRST BOSTON
S3253	24/09/92	JAMES CAPEL
S3254	24/09/92	ROBERT FLEMING
S3255	25/09/92	BANK OF TOKYO
S3256	26/08/92	KLEINWORT BENSONS
S3257	30/09/92	DRESDNER BANK
S3258	01/10/92	SPRD LINK
S3259R	01/10/92	CITIBANK FR
S3260R	20/10/92	REPUBLIC NEW YORK
S3261	30/09/92	TOYO TRUST INTERNATIONAL
S3262	06/10/92	MITSUBISHI BANK
S3263	06/10/92	ALBINGIA VERSICHERUNGS
S3264	06/10/92	UNION BANK OF SWITZERLAND
S3265	07/10/92	SCOTT POLLARD
S3266	07/10/92	CITIBANK FNK
S3267	07/10/92	SARASIN
S3268	07/10/92	KREDIETBANK
S3269	09/10/92	DAIWA EUROPE
S3270	09/10/92	SMITH NEW COURT
S3271	09/10/92	BP OIL
S3272	09/10/92	DG BANK
S3273	12/10/92	BARCLAYS DE ZOETE WEDD
S3274	12/10/92	CARGILL
S3275	13/10/92	FINANCIAL RISK
S3276	14/10/92	CURR DERIVATIVES
S3277R	14/10/92	BANK OF FINLAND
S3278	15/10/92	COUNTY NATWEST
S3279	15/10/92	BURNS FRY
S3280	16/10/92	FIMAT
S3281	19/10/92	ENNIS, KENT
S3282	20/10/92	ARTHUR ANDERSON
S3283R	20/10/92	RM RAVARUMAKLARNA
S3284	21/10/92	HEIDELBERGER ZEMENT
S3285	21/10/92	BANCO HISPANO

S3286	22/10/92	CITIBANK FNK
S3287	22/10/92	J.P. MORGAN
S3288	22/10/92	SAKARYA
S3289	22/10/92	COUNTY NATWEST
S3290	22/10/92	CEDEF
S3291	23/10/92	NORDDEUTSCHE LANDESBANK
S3292R	26/11/92	GEMINA
S3293	23/10/92	BANCA COMMERCIALE ITALIANA MILAN
S3294	26/10/92	BEAR STEARNS
S3295	26/10/92	BP OIL
S3296	26/10/92	ZUGER KANTONAL
S3297	26/10/92	MONUMENT DERIV#
S3298R	26/10/92	DRESDNER
S3299	27/10/92	JAMES CAPEL
S3300	27/10/92	FTI
S3301	27/10/92	SANWA INTERNATIONAL
S3302	28/10/92	COLONIA VERSICHERUNG
S3303	28/10/92	J.P. MGN MILAN
S3304	28/10/92	DEUTSCHE BANK
S3305	28/10/92	UNION BANK OF SWITZERLAND P&D
S3306	28/10/92	ENCORE
S3307	29/10/92	CREDIOP
S3308	30/10/92	CREDIT SUISSE FIRST BOSTON
S3309	02/11/92	FIMAT
S3310	03/11/92	PEREGRINE
S3311	03/11/92	LEU SECURITIES
S3312	04/11/92	IMG HOLLAND
S3313	04/11/92	CONTINENTAL BANK
S3314R	04/11/92	UNION BANK OF SWITZERLAND P&D
S3315	04/11/92	BARCLAYS BANK (NEW YORK)
S3316	05/11/92	NIPPON CREDIT INTERNATIONAL
S3317	05/11/92	BARINGS SEC
S3318	06/11/92	INVERLAT
S3319	09/11/92	CROSBY SECS
S3320R	10/11/92	SAILFISH
S3321	10/11/92	FINANCIAL TRADING AND CONSULTANCY (FTC)
S3322R	11/11/92	NEW JAPAN SECS
S3323	11/11/92	PACIFIC BASIN
S3324R	11/11/92	SAUDI CAIRO
S3325	12/11/92	BRANDEIS (BROKERS)
S3326	16/11/92	TFS ENERGY

S3327	16/11/92	DEUTSCHE BANK
S3328	16/11/92	BARCLAYS DE ZOETE WEDD
S3329	17/11/92	BEAR STEARNS
S3330	17/11/92	FOREIGN & COLONIAL MANAGEMENT
S3331	18/11/92	N.M. ROTHSCHILD & SONS
S3332	18/11/92	SAUDI AMERICAN BANK
S3333	19/11/92	FNX
S3334	20/11/92	SOCIMER
S3335	20/11/92	DEUTSCHE BANK
S3336	23/11/92	PEREGRINE
S3337	23/11/92	RABOBANK
S3338	24/11/92	ECHOSITE
S3339	24/11/92	CARGILL
S3340	25/11/92	DRESDNER
S3341	25/11/92	W.I. CARR
S3342	26/11/92	LEHMAN BROTHERS
S3343	26/11/92	HENKEL
S3344R	26/11/92	BOOZ ALLEN
S3345	27/11/92	JOHN RAE
S3346	27/11/92	WARDLEY JAMES CAPEL
S3347	27/11/92	J.P. MOR USA
S3348	27/11/92	EIM
S3349	27/11/92	BEAR STEARNS
S3350	30/11/92	SPENCER PAC
S3351	30/11/92	UNION BANK OF SWITZERLAND P&D
S3352R	01/12/92	CITIBANK FNK
S3353	02/12/92	STANDARD BANK
S3354	07/12/92	ISTITUTO BANCARIO SAN PAOLO DI TORINO
S3355	03/12/92	DEUTSCHE BANK
S3356	03/12/92	DRESDNER BNK
S3357	03/12/92	QT OPTEC
S3358	07/12/92	HYPOBANK WINTERTHUR
S3359	07/12/92	BANK OF IRELAND
S3360	07/12/92	PICTET
S3361	08/12/92	RIYAD BANK
S3362R	08/12/92	BEAR STEARNS
S3363	09/12/92	BAYSC. LAND
S3364	09/12/92	DEUT BNK BRUSS
S3365	29/10/92	ROLFE RESOURCES
S3366	11/12/92	N.T. BUTTERFIELD
S3367	11/12/92	NENCIONE
S3368R	11/12/92	JEFFERIES

S3369	14/12/92	FIDELITY
S3370	14/12/92	DB MADRID
S3371	14/12/92	JAM CAP INC
S3372	15/12/92	BUSCH, JOHN
S3373	15/12/92	MITSUB FIN
S3374	17/12/92	J.P. MORG LDN
S3375	17/12/92	BCP
S3376	18/12/92	J.P. MORG ITL
S3377	22/12/92	KIDDER, PEABODY & COMPANY
S3378	29/12/92	COLONIA VERSICHERUNG
S3379	29/12/92	SOCIMER
S3380	31/12/92	MORGAN GRENFELL
S3381	05/01/93	ROYAL INS
S3382	07/01/93	NCL INVESTM
S3383R	07/01/93	CHASE
S3384	08/01/93	FIMAT
S3385	08/01/93	B GEN D'LUX
S3386	11/01/93	UNILEVER
S3387	11/01/93	AMTSSPAREKASSEN
S3388	13/01/93	WARDLEY
S3389	13/01/93	ALCOR
S3390	14/01/93	COMPUTACENTER
S3391	14/01/93	CREDIT SUISSE FIRST BOSTON
S3392	15/01/93	PIERSON ICS
S3393	18/01/93	WOOD GUNDY
S3394	18/01/93	ADP INFORMATION
S2966R	10/12/91	FOUR SEASONS
S3395	21/01/93	LASSER/SRB
S3396	25/01/93	NORINCHUKIN INTERNATIONAL
S3397	25/01/93	WOOD GUNDY
S3398	25/01/93	DEUTSCHE BANK
S3399	27/01/93	BAY. VEREINS
S3400	27/01/93	SAUDI AMERICAN
S3401	27/01/93	J.P. MORG GER
S3402	27/01/93	CREDIT SUISSE FIRST BOSTON
S3403	27/01/93	TONG YANG SECS
S3404	29/01/93	ARAB PETROLEUM INVESTMENTS CORP - APICORP
S3405	29/01/93	UNION BANK OF SWITZERLAND P&D
S3406	29/01/93	J.P. MORG (ZURICH)
S3407	01/02/93	EIM
S3408	20/01/93	ALUM PECHINEY

S3409	02/02/93	CREDIT SUISSE FIRST BOSTON
S3410	02/02/93	KIDDER, PEABODY & COMPANY
S3411R	03/02/93	DELPHI RISK
S3412	03/02/93	KEMPER
S3413	09/02/93	HOARE GOVETT
S3414	10/02/93	BP CHEMICALS
S3415	10/02/93	BANK RINDERK.
S3416	11/02/93	PEREGRINE
S3417R	11/02/93	BAYSC. LAND
S3418	11/02/93	ING BANK
S3419	12/02/93	J.P. MGN AUST
S3420	15/02/93	BARING BROTH
S3421R	16/02/93	SELIGMANN
S3422	16/02/93	MARC RICH
S3423	16/02/93	BAYERI VER.
S3424	17/02/93	CHEMICAL FTR
S3425	17/02/93	MORG GRN AS
S3426	18/02/93	CSR LIMITED
S3427	18/02/93	SOCIETE GENERALE
S3428	18/02/93	VEREINS-UND
S3429	18/02/93	KANKAKU
S3430	19/02/93	BEAR STEARNS
S3431	22/02/93	CHART TILN.
S3432	22/02/93	CONCORDE
S3433	22/02/93	OXON
S3434	23/02/93	BANCA COMMERCIALE ITALIANA LONDON
S3435R	24/02/93	ST BNK NSW
S3436	24/02/93	LEHMAN BROTH
S3437	25/02/93	NORD LB
S3438	01/03/93	CARGILL INC
S3439	02/03/93	ELF TRADING
S3440	02/03/93	CARGILL UK
S3441	03/03/93	J. P. MORG LDN
S3442	03/03/93	CONCORDE
S3443	03/03/93	CONCORDE
S3444	04/03/93	NIPPON CREDIT INTERNATIONAL
S3445	04/03/93	RBS
S3446	05/03/93	KYTE FTRS
S3447	05/03/93	C. AITKEN AM
S3448	05/03/93	PETERCAM SEC
S3449	08/03/93	HFC BANK
S3450	08/03/93	CITIBANK(SWIS)

S3451	09/03/93	UNION BANK OF SWITZERLAND GENEVA
S3452	12/03/93	MERRILL LYNCH
S3453	12/03/93	CARGILL
S3454	12/03/93	DB (AUSTRIA)
S3455	12/03/93	GVENTER
S3456	15/03/93	SOCIETE NATIONALE DE CREDIT A L'INDUST.
S3457	15/03/93	CREDIT SUISSE
S3458	15/03/93	CREDIT SUISSE FIRST BOSTON
S3459	16/03/93	KYTE FTRS
S3460	16/03/93	ARTHUR CONSULTING
S3461	17/03/93	PCS
S3462	18/03/93	RIBANOFF, ALEX
S3463	19/03/93	CS FNK
S3464	19/03/93	FP COMPUTER
S3465	22/03/93	BANKERS TRUST
S3466	23/03/93	CAXTON
S3467	26/03/93	STATE STREET BANK & TRUST COMPANY
S3468	29/03/93	BRITISH TELECOM
S3469	29/03/93	HARVEY NICHOLS
S3470	30/03/93	UNION BANK OF SWITZERLAND
S2768B	12/04/91	CARGILL USA
S3501C	29/04/93	RIYAD BANK
S3502R	01/04/93	LONDON CLEARING HOUSE - LCH
S3503	01/04/93	J.P. MORGAN
S3504	01/04/93	LESLIE RAHL
S3505R	04/05/93	CHASE MANHATTAN BANK
S3506	01/04/93	SANGAMON
S3507	01/04/93	MONTEDISON
S3508	01/04/93	TRADITION
S3509	01/04/93	BARCLAYS DE ZOETE WEDD - NETH
S3510	01/04/93	UNION BANK OF SWITZERLAND
S3511	01/04/93	EAGLE STAR
S3512	01/04/93	FRANCE TELECOM
S3513	01/04/93	DEUTSCHE BANK
S3514	02/04/93	CSR LIMITED
S3515	05/04/93	FIRST MTG
S3516	05/04/93	HOARE GOVETT
S3517	06/04/93	JAMES CAPEL
S3518	06/04/93	SCOTIA
S3519R	06/04/93	RBS
S3520	07/04/93	STATE STREET BANK & TRUST COMPANY
S3521R	27/04/93	SOCIETE GENERALE STRAUSS TURNBULL

S3522	07/04/93	WOOD GUNDY
S3523	07/04/93	BAT CIG
S3524	08/04/93	DAIWA FTRS
S3525	08/04/93	AUSSEN
S3526	08/04/93	CARGILL CMD
S3527	13/04/93	REUTERS
S3528	13/04/93	PETERCAM SEC
S3529	13/04/93	FIMAT USA
S3530	14/04/93	BRANDEIS (BROKERS)
S3531	14/04/93	CARGILL INC
S3532	15/04/93	BANQUE INDOS.
S3533	16/04/93	EDWARDS, DAVID
S3534	19/04/93	FP COMPUTER
S3535	19/04/93	CREDIT SUISSE FIRST BOSTON - CSFB
S3536	19/04/93	CREDIT SUISSE FIRST BOSTON - CSFB
S3537	19/04/93	BARCLAYS DE ZOETE WEDD USA
S3538	20/04/93	INTERNATIONAL FINANCIAL MARKETS TRADING
S3539	20/04/93	CARGILL
S3540	20/04/93	IBJ SCHRODER
S3541	22/04/93	ING BANK
S3542	21/04/93	ACTUARIUS
S3543	27/04/93	DELOITTE TOUCHE
S3544R	27/04/93	ROSSI
S3545	27/04/93	BAN DU LOUVRE
S3546	27/04/93	NAT-NED
S3547R	04/06/93	KYTE FTRS
S3548	29/04/93	UNION BANK OF SWITZERLAND
S3549	30/04/93	DRESDNER BANK
S3550	30/04/93	HUNZIKER
S3551	30/04/93	UNION BANK OF SWITZERLAND GENEVA
S3552	04/05/93	VISIPRES
S3553	06/05/93	EURO BROKERS
S3554	07/05/93	SCHRODER SECS
S3555R	07/05/93	BANQUE INDOSUEZ
S3556	07/05/93	LEHMAN BGAM
S3557	10/05/93	AIB CAPITAL MARKETS
S3558	10/05/93	GOLDMAN SACHS
S3559	11/05/93	ALBINGIA VERSICHERUNGS
S3560	11/05/93	BAYERISCHE VEREINS
S3561	11/05/93	SVILUPPO
S3562	12/05/93	SHELL PENSIONS

S3563	13/05/93	CONTINENTAL
S3564	14/05/93	SPECTRON
S3565R	14/05/93	LANDESBANK
S3566	14/05/93	SPREADSHEET LINK
S3567	18/05/93	FIDELITY
S3568	19/05/93	LEHMAN BROTHERS
S3569	20/05/93	SPREADSHEET LINK
S3570	21/05/93	CARGILL
S3571	25/05/93	BRITISH TELECOM
S3572	26/05/93	BUSCH
S3573	27/05/93	TULLET & TOKYO
S3574	28/05/93	CITITRUST
S3575	28/05/93	R. FLEMING
S3576	28/05/93	UNION BANK OF SWITZERLAND
S3577R	07/06/93	BANQUE UNIGUEST
S3578	08/06/93	CITI GAM
S3579	08/06/93	ING BANK
S3580	09/06/93	BANK J. BAER
S3581	11/06/93	BANK J. BAER
S3582	11/06/93	KIEPERT
S3583	11/06/93	CHEMICAL ARG
S3584	14/06/93	TOUCHE ROSS
S3585	16/06/93	AIB CAPITAL MARKETS
S3586	16/06/93	MARC RICH
S3587	17/06/93	CARGILL(SING)
S3588	18/06/93	AARGAUISCHE KANTONALBANK
S3589R	13/07/93	OBJECT AM
S3590	21/06/93	COUNTY NATWEST
S3591	23/06/93	KIDDER, PEABODY & COMPANY
S3592	23/06/93	PORTLINE
S3593	23/06/93	INTERNATIONAL FINANCIAL MARKETS TRADING
S3594	23/06/93	G.K. GOH
S3595	23/06/93	EQUITABLE
S3596	25/06/93	ROLFE RESOURCES
S3597	28/06/93	W.I. CARR
S3598R	28/06/93	UNIBANK
S3599	28/06/93	CS (ZURICH)
S3600	29/06/93	DAIMLER-BENZ
S3601	29/06/93	CREDIT LYON
S3602	29/06/93	INVESTCORP
S3603	30/06/93	INVERLAT

S3604	01/07/93	EQUITABLE
S3605	02/07/93	CARGILL INC
S3606	05/07/93	BANCA COMMERCIALE ITALIANA (MILAN)
S3607	05/07/93	KYTE FTRS
S3608	05/07/93	DEUTSCHE BANK
S3609	01/07/93	BANK J. VONT
S3610	05/07/93	COLONIA VERSICHERUNG
S3611	06/07/93	RHEINISCHE
S3612	07/07/93	DEUTSCHE BANK
S3613R	08/07/93	BURNS PHILP
S3614	08/07/93	REA BROTHERS
S3615	08/07/93	STATE STREET BANK & TRUST COMPANY
S3616	09/07/93	CITIBANK AG
S3617	12/07/93	WESTDEUTSCHE LANDESBANK - WESTLB
S3618	12/07/93	AIB CAPITAL MARKETS
S3619	12/07/93	HAMBROS
S3620	12/07/93	KEA
S3621	19/07/93	BP AMERICA
S3622R	16/07/93	LUFTHANSA
S3623	19/07/93	BP SA
S3624	19/07/93	CARGILL
S3625	20/07/93	POLLARD, SCOTT
S3626	20/07/93	HARVARD
S3627	21/07/93	BHF-BANK
S3628R	21/07/93	NIPPON CREDIT INTERNATIONAL
S3629	21/07/93	FALCONWOOD
S3630	22/07/93	BEAR STEARNS
S3631	27/07/93	BEAR STEARNS
S3632	26/07/93	UNITED SAUDI
S3633R	29/07/93	CREDIT SUISSE ASSET MANAGEMENT
S3634	29/07/93	MITSUBISHI FINANCE INTERNATIONAL
S3635	29/07/93	ROBERT FLEMING
S3636	30/07/93	SPECTRON
S3637	30/07/93	UNION BANK OF SWITZERLAND (SING)
S3638	30/07/93	KLEINWORT
S3639	02/08/93	UNION BANK OF SWITZERLAND
S3640	02/08/93	IMG HOLLAND
S3641	03/08/93	WESTDEUTSCHE LANDESBANK - WESTLB
S3642	03/08/93	S.G. WARB
S3643	04/08/93	PETERCAM SECURITIES
S3644	04/08/93	BP FINANCE
S3645	05/08/93	NORDDEUTSCHE LANDESBANK

S3646	05/08/93	J.P. MORGAN
S3647R	05/08/93	INTERCAPITAL
S3648	09/08/93	MORGAN GRENFELL
S3649R	09/08/93	REUTERS
S3650	09/08/93	EAGLE STAR
S3651	09/08/93	ELF TRADING
S3652	09/08/93	CARGILL
S3653	11/08/93	UNILEVER
S3654	12/08/93	CONT USA
S3655	13/08/93	LEHMAN BGAM
S3656	16/08/93	BANCA COMMERCIALE ITALIANA
S3657	16/08/93	NORWICH UNION
S3658	17/08/93	VEREINS-UND WE
S3659	17/08/93	FINANCIAL TRADING AND CONSULTANCY (FTC)
S3660R	18/08/93	DEUTSCHE GIRO
S3661	18/08/93	ISTITUTO BANCARIO SAN PAOLO DI TORINO
S3662	19/08/93	BANQUE UNIGUEST
S3663	23/08/93	LEHMAN BROTHERS
S3664R	24/08/93	BURNS FRY
S3665	24/08/93	BOND CENTER
S3666	25/08/93	RZB
S3667	25/08/93	PANAFON
S3668	26/08/93	BARING BROTHERS
S3669	26/08/93	GOODBODY JAMES CAPEL STOCKBROKERS
S3670	26/08/93	MONTEDISON
S3671	27/08/93	EXPRINTER
S3672	01/09/93	LONDON & OXFORD SECURITIES
S3673	01/09/93	EFISA
S3674	01/09/93	UNION BANK OF SWITZERLAND FRANCE
S3675	01/09/93	BP AMERICA
S3676R	02/09/93	BNP CAPITAL MARKETS
S3677	02/09/93	SCHRODER SECS
S3678R	03/09/93	MORGAN GRENFELL
S3679R	06/09/93	BANK OF NZ
S3680	06/09/93	HAMBROS
S3681	06/09/93	SMITH NEW COURT
S3682R	06/09/93	ICI
S3683R	06/09/93	LIONHART
S3684	07/09/93	FINACOR
S3685	07/09/93	ABU DHABI INVESTMENT AUTHORITY - ADIA
S3686R	08/09/93	LOOR

S3687	08/09/93	SHELL
S3688	09/09/93	BANK CANTRADE
S3689	10/09/93	GNI
S3690	10/09/93	OK PETROLEUM
S3691	10/09/93	JCI
S3692	10/09/93	W.I. CARR
S3693	14/09/93	HAMAIE
S3694	14/09/93	DEWMONT
S3695	14/09/93	HOARE GOVETT
S3696	15/09/93	STANDARD M
S3697	16/09/93	NORD LB
S3698	17/09/93	MORGAN GRENFELL
S3699	20/09/93	BAT
S3700	20/09/93	DYNAGEST SA
S3701	20/09/93	HM IR
S3702	22/09/93	BEAR STEARNS
S3703	22/09/93	ISTITUTO BANCARIO SAN PAOLO DI TORINO
S3704	22/09/93	GUINESS MAHON
S3705	22/09/93	COUNTY NATWEST
S3706R	22/09/93	SOCIETE GENERALE DE BELGIQUE
S3707	22/09/93	L.O.G. INTERNATIONAL CORP - LOGIC
S3708R	23/09/93	SMITH NEW COURT
S3709	24/09/93	CARGILL
S3710	27/09/93	FP CONSULT
S3711	29/09/93	OLLIFF & PART
S3712	30/09/93	ISTITUTO BANCARIO SAN PAOLO DI TORINO
S3713	30/09/93	IRIS
S3714	30/09/93	NORINCHUKIN INTERNATIONAL
S3715	30/09/93	CARGILL FIN S
S3716R	01/10/93	ISTITUTO BANCARIO SAN PAOLO DI TORINO
S3717	01/10/93	PETERCAM SECURITIES
S3718	04/10/93	BARING CAPITAL
S3719	05/10/93	FIRSTCORP
S3720	05/10/93	VEREINS-UND-W
S3721	05/10/93	SHANNON
S3722	06/10/93	KEMPER
S3723	07/10/93	LAZARD
S3724	07/10/93	ING BANK
S3725	12/10/93	HOFMAN. ASSOC
S3726	12/10/93	LEHMAN TOKYO
S3727	12/10/93	HOARE GOVETT
S3728	12/10/93	CARGILL (AMST)

S3729	13/10/93	TULLETT
S3730	14/10/93	CREDIT SUISSE FIRST BOSTON - CSFB
S3731	18/10/93	LAZARD
S3732	18/10/93	REFCO
S3733	20/10/93	UNION BANK OF SWITZERLAND
S3734	20/10/93	DEUTSCHE CIRO
S3735	20/10/93	CARGILL
S3736	21/10/93	COMMERCE BANK
S3737	21/10/93	CREDIT SUISSE FIRST BOSTON - CSFB
S3738	21/10/93	SANWA/BGK
S3739	22/10/93	PORTLINE
S3740R	22/10/93	ISTITUTO BANCARIO SAN PAOLO DI TORINO
S3741	22/10/93	NATWEST CAPITAL MARKETS
S3742	25/10/93	ISTITUTO BANCARIO SAN PAOLO DI TORINO
S3743	25/10/93	QUICK EUROPE
S3744	26/10/93	JAMES CAPEL
S3745	27/10/93	RIYAD BANK
S3746	27/10/93	UNION BANK OF SWITZERLAND
S3747	27/10/93	PAINE WEBBER
S3748R	28/10/93	STANDARD CHART
S3749	29/10/93	CHASE
S3750	03/11/93	BANCA COMMERCIALE ITALIANA
S3751	03/11/93	BP OIL
S3752	29/09/93	DAIWA EUROPE
S3753	04/11/93	BARCLAYS DE ZOETE WEDD
S3754	04/11/93	SWISS VOLKSBANK
S3755	05/11/93	GEMINA EUROPE
S3756	04/11/93	MULTIBANCO
S3757	05/11/93	SARGENT BROS
S3758	05/11/93	HOARE GOVETT
S3759	08/11/93	BARCLAYS DE ZOETE WEDD
S3760	08/11/93	CARGILL
S3761	08/11/93	ARAB PETROLEUM INVESTMENTS CORP
S3762	09/11/93	KLEINWORT BENSONS
S3763	09/11/93	INVERLAT
S3764	10/11/93	BANK OF ISRAEL
S3765	11/11/93	DEN NORSKE
S3766R	04/10/93	UNTAS
S3767R	12/11/93	TRINKAUS
S3768R	12/11/93	MORGAN STANLEY
S3769	16/11/93	MONTEDISON
S3770	16/11/93	GODEL

S3771	17/11/93	BANK J. BAER
S3772R	17/11/93	COLOGNE RE
S3773	18/11/93	KREDIETBANK
S3774	18/11/93	BARD
S3775R	19/11/93	KAUFHOF
S3776	22/11/93	ARAB PETROLEUM INVESTMENTS CORP - APICORP
S3777	23/11/93	BARING BROTHERS
S3778	24/11/93	JPBT
S3779	24/11/93	K.E.A.
S3780	24/11/93	SARGENT BROS
S3781	25/11/93	UNION BANK OF SWITZERLAND
S3782	25/11/93	CARGILL
S3783R	01/12/93	NATWEST
S3784	01/12/93	FIMAT
S3785	02/12/93	KYTE FUTURES
S3786	02/12/93	NATWEST
S3787	03/12/93	SHELL
S3788	06/12/93	EQUITABLE
S3789	07/12/93	ZURCHER KANTONALBANK
S3790	08/12/93	MITS FIN
S3791	13/12/93	GIROBANK
S3792	13/12/93	NIPPON CREDIT INTERNATIONAL
S3793	14/12/93	BEAR STEARNS
S3794	14/12/93	SEDGWICK
S3795	15/12/93	FEINGOLD/PW
S3796	15/12/93	VISIPRES
S3797	16/12/93	BURNS FRY
S3798	16/12/93	TOYO TRUST INTERNATIONAL
S3799	17/12/93	WEST MERCH
S3800	20/12/93	LANDESBANK RH
S3801	20/12/93	BARING SEC
S3802	20/12/93	HILL SAMUEL
S3803	20/12/93	SARGENT BROS
S3804	21/12/93	UNION BANK OF SWITZERLAND
S3805	21/12/93	MULTIBANCO
S3806	21/12/93	BANQUE SCS
S3807	21/12/93	FIMAT
S3808	22/12/93	SMEET, VERBAET
S3809	22/12/93	MERRILL LYNCH
S3810	29/12/93	DREYFUS
S3811	30/12/93	BP AMERICA

S3812	04/01/94	CREDIT LYONNAIS
S3813	04/01/94	MORGAN STANLEY
S3814	06/01/94	CARGILL
S3815	06/01/94	EAGLE STAR
S3816	06/01/94	DEUTSCHE BANK (BRUSSELS)
S3817	06/01/94	SMITH BARNEY
S3818	07/01/94	D. BRINK
S3819	07/01/94	ABU DHABI INVESTMENT AUTHORITY - ADIA
S3820	10/01/94	CARR INDOS
S3821	11/01/94	PANMURE
S3822	11/01/94	BP FINANCE
S3823	12/01/94	DYNAGEST
S3824	12/01/94	SARASIN
S3825	13/01/94	LASSER MARSHALL
S3826	13/01/94	BEAR STEARNS
S3827	14/01/94	STATE STREET BANK & TRUST COMPANY
S3828	17/01/94	NOMURA (SWIT)
S3829	17/01/94	BARCLAYS BANK
S3830	17/01/94	FEINGOLD
S3831	18/01/94	CARR INDOS
S3832	18/01/94	WORALCO
S3833	18/01/94	ENTERPRISE
S3934	18/01/94	MASEFIELD
S3835	19/01/94	R.W. DAY
S3836	19/01/94	CONTINENTAL
S3837	19/01/94	BANK OF AMERICA
S3838	20/01/94	RMF TRADING
S3839R	24/01/94	BRITISH TELECOM
S3840	10/01/94	BANK J. BAER
S3841	24/01/94	LITCHFIELD
S3842	24/01/94	BLUESTAR
S3643	24/01/94	ACCENT CIRCONFLEX
S3844	24/01/94	MRM SECS
S3845	24/01/94	BP OIL
S3546	25/01/94	KLEINWORT BENSON
S3847R	25/01/94	SYDAN
S3848	26/01/94	LCH
S3849	27/01/94	CARGILL
S3850	28/01/94	MORGAN GRENFELL
S3851	31/01/94	UNION BANK OF SWITZERLAND
S3852	31/01/94	NATWEST
S3853	01/02/94	ISTITUTO BANCARIO SAN PAOLO DI TORINO

S3854	01/02/94	DESCAP
S3855	01/02/94	NATWEST
S3856	01/02/94	STATE STREET BANK & TRUST COMPANY
S3857	02/02/94	MILLENNIUM
S3858	02/02/94	TILNEY & CO
S3859	03/02/94	J.P. MOR IM
S3860	03/02/94	J.P. MOR IM
S3861	03/02/94	PETERCAM SECURITIES
S3862	03/02/94	STANDARD BANK
S3863	04/02/94	ING BANK
S3864	07/02/94	KLEINWORT B
S3865	08/02/94	HOLFORD
S3866	09/02/94	NOMURA
S3867	09/02/94	HILL SAMUEL
S3868	09/02/94	KLEINWORT B
S3869	09/02/94	KIDDER, PEABODY & COMPANY
S3870	10/02/94	WILLIAMS DE B
S3871	11/02/94	NORINCHUKIN INTERNATIONAL
S3872	11/02/94	SASKPOWER
S3873	15/02/94	PROVIS AA
S3874	15/02/94	BARCLAYS DE ZOETE WEDD
S3875	16/02/94	HALIFAX
S3876	16/02/94	LEHMAN BR
S3877	17/02/94	CLERICAL M
S3878	21/02/94	STROEVE
S3879	21/02/94	NCB FTRS
S3880	22/02/94	HAMBRECHT
S3881	22/02/94	CONTINENTAL
S3882	23/02/94	BANCO FRANCES
S3883	23/02/94	BANK J. BAER
S3884	23/02/94	SULZER
S3885	23/02/94	INTL CAP MKTS
S3886	24/02/94	LEICHER
S3887	24/02/94	CREDIT LYONNAIS
S3888	24/02/94	FELTHAM
S3889	25/02/94	SUMITOMO CO
S3890	25/02/94	GNI
S3891	28/02/94	CITIBANK
S3892	28/02/94	UNION BANK OF SWITZERLAND
S3893	28/02/94	ARAB PETROLEUM INVESTMENTS CORP - APICORP
S3894	28/02/94	DEPHA BANK AG

S3895	28/02/94	SARGENT BROS
S3896	01/03/94	ALBERTINI & C.
S3897	02/03/94	SHAW & CO
S3898	02/03/94	SASKPOWER
S3899	03/03/94	KLEINWORT BENSON
S3900	03/03/94	CHO HUNG BANK
S3901	03/03/94	SELIGMAN
S3902	04/03/94	VEALER
S3903	04/03/94	CONTINENTAL
S3904	04/03/94	MORGAN STANLEY
S3905	04/03/94	STRONG
S3906	07/03/94	MERRILL LYNCH
S3907	07/03/94	GUINESS MAHON
S3908	09/03/94	J.P. MORGAN
S3909	09/03/94	BUCHANAN
S3910	09/03/94	BURNSTEIN
S3911	09/03/94	GANDON
S3912	14/03/94	MORGAN STANLEY
S3913	14/03/94	GOTTARDO
S3914	15/03/94	UNION BANK OF SWITZERLAND HK
S3915	15/03/94	KLEINWORT B
S3916	15/03/94	CRESVALE
S3917	16/03/94	DOW CHEMICAL
S3918	16/03/94	GLOBAL INVEST
S3919	18/03/94	BETA MDR
S3920	18/03/94	VERLAG
S3921	18/03/94	BP OIL
S3922	23/03/94	CITY & INTL
S3923	23/03/94	REFCO
S3924	25/03/94	GRANTHAM
S3925	28/03/94	SMITH NEW COURT
S3926	28/03/94	SMITH NEW COURT
S3927	29/03/94	BETA MDR
S3928	29/03/94	EURO SUISSE
S3929	31/03/94	STABLES
S3930	31/03/94	FELTHAM
S4000	05/04/94	CARGILL
S4001	05/04/94	STABLES
S4002	05/04/94	SARGENT BROS
S4003	05/04/94	LITCHFIELD
S4004	06/04/94	IRC
S4005	06/04/94	SBC

S4006	06/04/94	BARING BROTH
S4007	06/04/94	DEUTSCHE BANK
S4008	06/04/94	CREDIT LYONNAIS
S4009	06/04/94	FIMAT
S4010	07/04/94	STABLES
S4011	08/04/94	SAKURA
S4012	08/04/94	FIRSTCORP
S4013	08/04/94	TOYO TRUST INTERNATIONAL
S4014R	11/04/94	BARCLAYS DE ZOETE WEDD
S4015	12/04/94	DRW TRADING
S4016	14/04/94	HOARE GOVETT ASIA
S4017	14/04/94	ALLIED PROV
S4018	18/04/94	COLOGNE RE
S4019	19/04/94	LITCHFIELD
S4020	19/04/94	REPUBLIC NY
S4021	19/04/94	J.P. MORGAN
S4022	21/04/94	STABLES
S4023	25/04/94	CIBC
S4024	26/04/94	OBJECT ASSET
S4025	26/04/94	SANGAMOM TRADING
S4026	27/04/94	J.P. MORGAN
S4027	28/04/94	GORDIAN GP
S4028	03/05/94	BANK OF TOKYO
S4029	06/05/94	MITSUBISHI SW
S4030	06/05/94	EATON VANCE
S4031	09/05/94	SPECTRON
S4032	09/05/94	AMTSSPAREK
S4033	09/05/94	BP AMERICA
S4034	10/05/94	BARCLAYS DE ZOETE WEDD
S4035	10/05/94	SANWA SECURITIES
S4036	10/05/94	KLEINWORT
S4037	11/05/94	EURO BROKERS
S4038	11/05/94	YAMAICHI INTERNATIONAL
S4039	11/05/94	AIB CAPITAL MARKETS
S4040	11/05/94	VEREINS-UND WEST
S4041	11/05/94	STANDARD MERC
S4042	11/05/94	SARGENT BROS
S4043	11/05/94	LITCHFIELD
S4044	12/05/94	INVESTCORP
S4045	12/05/94	CARGILL USA
S4046	12/05/94	INTEGRO
S4047	16/05/94	KLEINWORT BENSONS

S4048	16/05/94	KLEINWORT BENSONS
S4049	18/05/94	B. UNIGEST
S4050R	18/05/94	CARGILL USA
S4051R	19/05/94	BIERSAUM
S4052	19/05/94	UNION PLC
S4053R	20/05/94	TSB
S4054	20/05/94	BAYERISCHE LANDE
S4055	23/05/94	RUDOLF WOLFF
S4056	24/05/91	UNION PLC
S4057	25/05/94	HAMBURG
S4058	25/05/94	ABBEY LIFE
S4059	26/05/94	AKB
S4060	27/05/94	SANWA SECURITIES
S4061	27/05/94	ROBERT FLEMING
S4062	27/05/94	SOCIETE GENERALE
S4063	31/05/94	YAMAICHI INTERNATIONAL
S4064	02/06/94	HILI SAMUEL
S4065	03/06/94	B. UNIGEST
S4066	03/06/94	WEST MERCHANT
S4067	06/06/94	BANK J BAER
S4068	06/06/94	SALOMON BROTHERS
S4069	06/06/94	CARIMONTE
S4070	08/06/94	ACTUARIUS
S4071	08/06/94	UBS (GERMANY)
S4072	10/06/94	MORGAN GRENFELL
S4073	13/06/94	NTLA
S4074	13/06/94	SWISS BANK CORP
S4075	13/06/94	ROBERT FLEMING
S4076	13/06/94	SARGENT BROTH
S4077	14/06/94	UNION BANK OF SWITZERLAND (UBS)
S4078	14/06/94	LITCHFIELD
S4079R	15/06/94	SBCI
S4080	15/06/94	BANQUE DU LOUVRE
S4081	16/06/94	STABLES
S4082	17/06/94	SALOMON BROTHERS
S4083	17/06/94	PRICE WATERHOUSE
S4084	22/06/94	MORGAN GRENFELL
S4085	22/06/94	RPI
S4086	22/06/94	ING BANK
S4087	23/06/94	RIYAD BANK
S4088	23/06/94	DEWMONT
S4089	23/06/94	STANDARD LIFE

S4090	24/06/94	MOBIL CORP
S4091	24/06/94	SARGENT BROTH
S4092	28/06/94	SALOMON BROTHERS
S4093	29/06/94	DEN DANSKE
S4094R	29/06/94	BANQUE INDOSE
S4095	30/06/94	BANQUE SCS
S4096	30/06/94	LEEDS & HOLBECK
S4097	30/06/94	VEREINS-UND WEST
S4098	01/07/94	HATTON
S4099	01/07/94	CHEMICAL
S4100R	04/07/94	DEGELD
S4101	04/07/94	UBS-GENEVA
S4102	05/07/94	EUROPEAN COMM
S4103	05/07/94	PRIOR, J.
S4104	05/07/94	WEST MERCHANT BANK
S4105	06/07/94	SPUTZ
S4106R	07/07/94	KOCH
S4107	07/07/94	KLEINWORT
S4108	07/07/94	BHF
S4109R	08/07/94	YAGI
S4110	08/07/94	CANTOR
S4111	12/07/94	PROVIS AA
S4112R	13/07/94	UEDA BUTLER
S4113	13/07/94	HAMBURG-MANNHEIMER
S4114	15/07/94	YAMAICHI INTERNATIONAL
S4115R	18/07/94	BANK LEU
S4116R	19/07/94	AEGON
S4117	20/07/94	ARAB JORDAN
S4118	20/07/94	HAMBROS
S4119	21/07/94	ING BANK(LUX)
S4120R	21/07/94	CMS
S4121R	21/07/94	LOMBARD
S4122	22/07/94	BARING SECS
S4123	25/07/94	ADMINIST
S4124	26/07/94	SYDBANK
S4125	26/07/94	GUINESS FL
S4126	26/07/94	MOBIL CORP
S4127R	27/07/94	DELBRUCK
S4128	27/07/94	CREDITANSTALT
S4129	27/07/94	NORDDEUTSCHE LANDESBANK
S4130	28/07/94	BANQUE NATIONALE DE PARIS
S4131	28/07/94	NATWEST

S4132	29/07/94	SALOMON BROTHERS
S4133	29/07/94	ARBOR
S4134R	29/07/94	DAIMLER
S4135	01/08/94	SALOMON BROTHERS
S4136R	01/08/94	NEWTON INVESTMENT MANAGEMENT
S4137	01/08/94	BANCO IVERSION
S4138	01/08/94	NDH BANK
S4140	02/08/94	DIB INDUSTRI
S4141	02/08/94	DEUTSCHE BANK
S4142	03/08/94	BANK J BAER
S4143	03/08/94	J.P. MORGAN
S4144R	03/08/94	SOCIETE GENERAL DE BELGIQUE
S4145	03/08/94	ROMAN BAUERNFEIND VERPACKUNGSWERK
S4146	04/08/94	INTERNATIONAL FINANCIAL MARKETS TRADING
S4147	05/08/94	SARGENT BROTH
S4148	08/08/94	LAMBERT
S4149	08/08/94	HAMBROS
S4150	08/08/94	WOOD GUNDY
S4151	08/08/94	TRANS-ARABIAN
S4152	09/08/94	HOARE GOVETTR
S4153R	09/08/94	HELABA
S4154	09/08/94	ACT INTL
S4155R	09/08/94	CHASE MANHATTAN
S4156	09/08/94	FUTECH
S4157	09/08/94	EQUITABLE
S4158	11/08/94	UNION BANK OF SWITZERLAND - UBS (GENEVA)
S4159	12/08/94	PARIBAS
S4160	15/08/94	CREDIT LYONNAIS
S4161	15/08/94	HOARE GOVETTR
S4162	16/08/94	BOOMERANG
S4163	16/08/94	CURVALUE
S4164	17/08/94	BANK J. VONTOBEL
S4165	18/08/94	KLEINWORT BENS
S4166	18/08/94	KLEINWORT BENS
S4167	19/08/94	HAMBROS
S4168	19/08/94	BANKERS TRUST ASSET MANAGEMENT
S4169	19/08/94	CITIBANK (FRANCE)
S4170	19/08/94	UNION BANK OF SWITZERLAND - UBS (SING)
S4171	19/08/94	NORWICH UNION
S4172	22/08/94	NOMURA

S4173	22/08/94	SECURITIES INVESTMENT BANK
S4174	23/08/94	LEHMAN BROTHERS
S4175	24/08/94	GOODBODY JAMES CAPEL STOCKBROKERS
S4176	24/08/94	NORWICH UNION
S4177	25/08/94	INVESTCORP
S4178	25/08/94	EUROTRUST
S4179R	26/08/94	HOARE GOVETTR
S4180	30/08/94	CHASE MANHATTAN
S4181	30/08/94	CHASE MANHATTAN
S4182	30/08/94	BARCLAYS DE ZOETE WEDD
S4183	01/09/94	LITCHFIELD
S4184	01/09/94	STABLES
S4185	01/09/94	UNION BANK OF SWITZERLAND - UBS
S4186	26/08/94	GUINESS FL
S4187	02/09/94	BANK JULIUS BAER
S4188	05/09/94	KYTE FUTURES
S4189	06/09/94	HESSISCHE LANDESBANK
S4190	06/09/94	EFISA
S4191	07/09/94	MURFIN
S4192	07/09/94	CANTOR FITZGERALD
S4193	09/09/94	MORGAN GRENFELL
S4194	09/09/94	BANK OF NEW ZEALAND
S4195R	09/09/94	SAI INVESTMENTI
S4196	12/09/94	J.G.W. AGNEW
S4197	12/09/94	BARCLAYS DE ZOETE WEDD INV MGMT
S4198	13/09/94	LONDON COMMODITY EXCHANGE
S4199	13/09/94	BARCLAYS DE ZOETE WEDD (JPN)
S4200	13/09/94	AHORRO CORP
S4201	13/09/94	BARING BROTHERS
S4202	13/09/94	ABN AMRO SECS
S4203	14/09/94	DEUTSCHE BANK
S4204	15/09/94	SAUDI FRENCH BANK
S4205R	15/09/94	SOCIMER INT
S4206	19/09/94	HAMBROS
S4207	20/09/94	RIBAROFF
S4208	20/09/94	GERALD LTD
S4209	20/09/94	CREDIT SUISSE ASSET MANAGEMENT
S4210	20/09/94	GOODBODY JAMES CAPEL STOCKBROKERS
S4211	21/09/94	PANAFON
S4212	21/09/94	PETERCAM SECURITIES
S4213	21/09/94	FALCONWOOD
S4214	21/09/94	DR LOOR

S4215	21/09/94	INTERCAPITAL
S4216	21/09/94	PHILIPPINE
S4217	21/09/94	CARGILL BV
S4218	22/09/94	KLEINWORT BENSON CAPITAL MANAGEMENT
S4219	26/09/94	FNX LTD
S4220	28/09/94	CREDIT LYONNAIS
S4221	28/09/94	QUORUM
S4222	29/09/94	BARING CAPITAL
S4223R	29/09/94	UNION BANK OF SWITZERLAND - UBS
S4224	29/09/94	ROBERT FLEMING
S4225	29/09/94	CHASE MANHATTAN
S4226	29/09/94	CARGILL USA
S4227	30/09/94	GEMINA EUROPE
S4228	30/09/94	VICTORIA
S4229	30/09/94	HAMBROS
S4230	03/10/94	SALOMON BROTHERS
S4231	03/10/94	BARCLAYS DE ZOETE WEDD
S4232	03/10/94	DRESDNER
S4233	03/10/94	BANQUE INTERNATIONALE A LUXEMBOURG (LONDON)
S4234	04/10/94	CALHORPE
S4235	04/10/94	INTER MARKET
S4236	04/10/94	FINATECH
S4237	04/10/94	AIB CAPITL MARKETS
S4238	04/10/94	BANK OF N.T. BUTTERFIELD & SON
S4239	05/10/94	UNION BANK OF SWITZERLAND - UBS
S4240	05/10/94	HYPOBANK
S4241	06/10/94	BOEHRINGER INGELHEIM
S4242	06/10/94	BOEHRINGER INGELHEIM
S4243	07/10/94	BANCO INTERNACIONAL
S4244	07/10/94	BARCLAYS METAL
S4246	11/10/94	NOMURA HK
S4247	10/10/94	BARCLAYS METAL
S4248	11/10/94	CITIBANK IT
S4249	11/10/94	AXA SA
S4250	11/10/94	CARGILL
S4251	11/10/94	HILL SAMUEL BANK
S4252	14/10/94	J.M. HARWOOD
S4253	14/10/94	EUROCASH
S4254	14/10/94	AHORRO CORPORATION FINANCIERA
S4255	14/10/94	MERCATI FINANZIARIA
S4256	14/10/94	DE VEER

S4257	14/10/94	HYDRO QUEBEC
S4258	18/10/94	EUROTRUST
S4259	19/10/94	GLARAS FINANZ
S4260	19/10/94	FP COMPUTER
S4261	20/10/94	J.M. HARWOOD
S4262R	20/10/94	DEMINEX
S4263	21/10/94	OK PETROLEUM
S4264	24/10/94	SALOMON BROTHERS
S4265	24/10/94	SALOMON BROTHERS
S4266	25/10/94	BARCLAYS BANK
S4267	25/10/94	RMJ SECURITIES
S4268	25/10/94	BACK BAY ADVISORS
S4269	25/10/94	KLEINWORT BENSON
S4270	26/10/94	DELTA INVES
S4271	26/10/94	GERRARD & NATIONAL INTER COMMODITIES - GNI
S4272	26/10/94	HAMBROS
S4273	26/10/94	BANK J. VONTOBEL
S4274	27/10/94	ORCO BANK
S4275	27/10/94	TRADON COMMODITIES
S4276	01/11/94	TRANS-ARABIAN INVESTMENT BANK
S4277	31/10/94	UNION BANK OF SWITZERLAND - UBS
S4278	01/11/94	ARAB PETROLEUM INVESTMENTS CORP - APICORP
S4279	01/11/94	AMTSSPAREK
S4280	01/11/94	UNION BANK OF SWITZERLAND - UBS GLOBAL EQUITY DERIVATIVES
S4281	03/11/94	EUROTRUST
S4282	03/11/94	SALOMON BROTHERS
S4283	04/11/94	CITICORP HK
S4284	04/11/94	VISIPRES
S4285	04/11/94	KAUFHOF FINANCE
S4286	07/11/94	FIRST NATIONAL BANK OF CHICAGO
S4287	08/11/94	EUROTRUST
S4288	08/11/94	TECHNOSIS
S4289	08/11/94	NATIONAL WESTMINSTER BANK
S4290	08/11/94	ABN AMRO SECS
S4291	09/11/94	DEUTSCHE BANK
S4292	09/11/94	FP COMPUTER
S4294	09/11/94	MONECO
S4293	14/11/94	FNX LIMITED

(2)

Supreme Court, U.S.
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JUL 27 2001
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No. 00-1948

IN THE

Supreme Court of the United States

FINANCIAL SYSTEMS SOFTWARE (UK) LIMITED,

Petitioner,

v.

FINANCIAL SOFTWARE SYSTEMS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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12 pp

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. SHOULD THIS COURT DENY THE PETITION FOR WRIT OF CERTIORARI WHEN THERE ARE NO COMPELLING REASONS TO GRANT THE PETITION BECAUSE THE DECISION OF THE COURT OF APPEALS DID NOT RESOLVE ANY IMPORTANT FEDERAL QUESTION IN A WAY WHICH WOULD CONFLICT WITH RELEVANT DECISIONS OF THIS COURT, OR PROVIDE ANY OTHER BASIS FOR REVIEW UNDER RULE 10?

Suggested Answer: in the Affirmative.

2. SHOULD THIS COURT DENY THE PETITION FOR WRIT OF CERTIORARI WHERE THE DISTRICT COURT AND THE COURT OF APPEALS, FOLLOWING CROSS MOTIONS FOR SUMMARY JUDGMENT, DETERMINED THAT THE RESPONDENT'S ("SOFTWARE") TRADEMARK WAS ENTITLED TO PROTECTION BECAUSE THE UNDISPUTED FACTS ESTABLISH THAT THE PETITIONER ("SYSTEMS") HAD ABANDONED ITS MARK?

Suggested Answer: in the Affirmative.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Financial Software Systems, Inc. is the only Respondent in this proceeding. Respondent certifies pursuant to Supreme Court Rule 29.6 that it has no parent corporation, nor are there any publicly held companies owning 10% or more of its stock. Financial Systems Software (UK) Ltd. is the only Petitioner in this proceeding, and to the Respondent's knowledge, the Petitioner has no parent corporation and there are no publicly held companies owning 10% or more of the Petitioner's stock.

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REASONS FOR DENYING THE WRIT

The case under consideration is a relatively straightforward trademark dispute. The Court of Appeals upheld the ruling that SOFTWARE'S mark FSS stylized with a bell curve was entitled to trademark protection, whereas SYSTEM'S sporadic use of the initials FSS was not.

The question presented, and the manner in which it was determined, does not present the kind of compelling reasons for an exercise of this court's judicial discretion. It cannot be said that the Court of Appeals departed from any accepted or usual course of judicial proceedings, or that it sanctioned such a departure by a lower court, or that the Court of Appeals decided any important federal question which conflicts with a relevant decision of this court. Accordingly, there is no basis under Rule 10 to justify granting a Petition for Writ of Certiorari.

COUNTERSTATEMENT OF THE CASE

Despite SYSTEM'S attempt to characterize the decisions of the District Court and the Court of Appeals as "fundamentally unfair" so that the Petitioner "did not receive a hearing consonant with due process", the record demonstrates otherwise. While complaining that it was deprived of its "day in court", SYSTEMS fails to emphasize that the case was submitted to the court on cross-motions for summary judgment with detailed stipulations of fact, thereby leaving nothing for the court but to apply the law. *App.* at 48a-69a.

Since both parties agreed to submit the matter to the court on cross-motions for summary judgment, it cannot be seriously contended that SYSTEMS did not receive its "day in court" after being given the opportunity to present the case on stipulated facts, present written briefs to the court, and present oral argument to the court. This hardly sounds like the "summary adjudication" about which the Petitioner complains.

The only issue presented in the Petition is whether the District Court and the Court of Appeals incorrectly determined that SYSTEMS had abandoned a trademark in the initials FSS under Section 45 of the Lanham Act, 15 U.S.C. § 1127 (2001).

SYSTEMS concedes that the facts "are not significantly in dispute". Petition at Page 3. Indeed, the facts are not in dispute at all since the case was submitted on cross-motions for summary judgment.

Although the name of the Petitioner was changed to Financial Systems Software (UK) Limited by its owner, Dr. Mamdouh Barakat, in 1989, Dr. Barakat took no steps to register his company's name or the FSS initials as a protected trademark. Stipulation 7 and 8, *App.* at 48a. SYSTEM'S existence was unknown to SOFTWARE when SOFTWARE was incorporated on April 29, 1992. Stipulation 32, 33, *App.* at 50a. SOFTWARE adopted, and has used continuously, a distinctively stylized trademark FSS with a bell curve symbol since June 1992. Additional Stipulations 2, 13, *App.* 64a, 65a. Although Dr. Barakat became aware of SOFTWARE'S existence as early as 1992, he never objected to SOFTWARE'S use of its name or trademark, in part be-

cause Dr. Barakat doesn't like lawyers. Stipulations 43-46, *App.* at 53a. No objection was voiced by Dr. Barakat to SOFTWARE'S use of the FSS mark until August 17, 1994, despite SOFTWARE'S use of its company name and FSS logo for 1 2 to 2 years. Stipulations 61-64, *App.* at 55a).

Although SYSTEMS objected to SOFTWARE'S use of its company name and logo in 1994, SYSTEMS had in fact stopped using the FSS initials in August, 1990. This was not a casual or inadvertent occurrence, but was a deliberate decision on the part of Dr. Barakat based on the recommendations of an advertising consultant. Stipulation 16, *App.* at 49a. SYSTEMS did not resume use of the FSS initials until early 1994. This information was determined by the District Court following a careful review of the documents submitted as part of the stipulated facts. *App.* at 43a.

Moreover, in the latter part of 1994, Dr. Barakat engaged in series of transactions resulting in the assignment of the name Financial Systems Software and FSS to FNX Ltd., a competitor of SOFTWARE. FNX Ltd., through a prior contract, was obliged not to use the name Financial Software Services, or its trademarks, or any confusingly similar names. Stipulations 39, 76-83, *App.* 52a, 53a, 57a-59a. It was not until May 29, 1996 that FNX Ltd. assigned the right, title and interest in the disputed trademark back to SYSTEMS. Stipulation 102, *App.* 60a, 61a.

ARGUMENT

SOFTWARE'S trademark logo, which consists of the company name, a schematic of a normal, or bell, curve, and the company initials FSS colored in red and black, is unique

and capable of trademark protection. In contrast, the initials FSS as used sporadically by the Petitioner are not entitled to trademark protection.

A trademark is a designation used "to identify and distinguish" the goods of a person. Lanham Act, § 45, 15 U.S.C. § 1127. In order to establish the existence or ownership of a trademark, the prior user must establish more than the fact that, at some date in the past, it used a mark; rather, the prior user must establish that such use has continued to the present. *D&M Antique Import Corp. v. Royal Saxe Corp.*, 311 F.Supp. 1261 (SDNY 1969); *Community of Roquefort v. Santo,* 443 F.2d 1196 (C.C.P.A. 1971). The right to a particular mark grows out of its use, not its mere adoption, and the ownership of a mark grows out of and depends upon the continuance of use. *United Drug Co. v. Theodore Rectanus Co.,* 248 U.S. 90, 39 S.Ct. 48, 63 L.Ed. 141 (1918); *Alfred Dunhill of London v. Dunhill Tailored Clothes,* 293 F.2d 685, 692 (C.C.P.A. 1961), *cert. denied*, 396 U.S. 864 (1962).

In this case, SYSTEMS never used the FSS mark in any stylized fashion, but simply used the three capital letters together. Stipulation 14, *App.* at 49a. The undisputed evidence establishes that SYSTEMS virtually ceased using the FSS initials in 1990. This was not a matter of happenstance, but was a conscious decision on the part of Dr. Barakat to follow the recommendation of his advertising designer not to use the FSS mark. Stipulation 16, *App.* at 49a. Not even the initials FSS, much less a stylized mark incorporating the initials, were employed in SYSTEMS' advertisements from 1990 through January, 1994. Stipulation 16-18, *App.* at 49a.

The Petitioner's contention that the District Court, and the Court of Appeals, failed to apply the proper standards, or indeed any standards at all, in addressing the issue of abandonment is simply erroneous. The Court of Appeals addressed the question of whether the District Court applied the wrong legal standard for abandonment. After determining that the District Court had correctly determined that there was a complete absence of any evidence in the record to dispute the evidence of abandonment from 1991 to 1994, the court then held that it was Petitioner's burden to produce evidence sufficient to establish a jury question. *App.* at 30a.

With respect to the two-part test of non-use and intent in order to show abandonment, the Act itself provides that "non-use for two consecutive years shall be prima facie abandonment". 15 U.S.C. § 1127 (1976); *United States Jaycees v. Philadelphia Jaycees,* 639 F.2d 134, 138 (3d Cir. 1981). In the absence of some evidence offered by SYSTEMS to rebut the prima facie case, the Court of Appeals correctly determined that it was not SOFTWARE'S burden to prove intent. Petitioner's problem arises not from the alleged failure of the District Court and the Court of Appeals to apply the appropriate standard, but from the standard as set forth in the Lanham Act allowing non-use for two consecutive years to be prima facie evidence of abandonment.

Although the Petitioner has tried to characterize the decision of the Court of Appeals as arising to an unconstitutional deprivation of property without due process, the Court of Appeals recognized that due process can be violated if juries are permitted to engage in speculation without factual support. The Court of Appeals correctly concluded that:

> [t]here is simply no way a reasonable jury could do anything more than speculate that SYSTEMS' intent was to develop and maintain the "FSS" mark as a viable and lasting trademark. SYSTEMS never attempted to stylize the mark in any significant fashion (other than occasionally displaying the initials diagonally on a grid); it made a documented decision to replace the mark with the company's full name in many, if not all, of its advertisements, and it assigned the mark to a company that was contractually bound not to use marks similar to those of SOFTWARE. This is all in marked contrast to SOFTWARE's actions, which consistently evidence an intent to adopt and continually use the same mark. SOFTWARE designed a logo incorporating a normal curve in addition to its "FSS" initials and it has used this logo without interruption.

App. at 31a, 32a.

CONCLUSION

The Petitioner has presented no compelling reason why this court should grant a Writ of Certiorari. No important question of federal law or divergence of judicial opinion which would justify review is before the Court. The Court of Appeals correctly applied the law to the stipulated facts presented by the parties on their cross-motions for summary judgment, and there is no basis, constitutional or otherwise, for further review.

WHEREFORE, respondent, Financial Software Systems, Inc. requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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